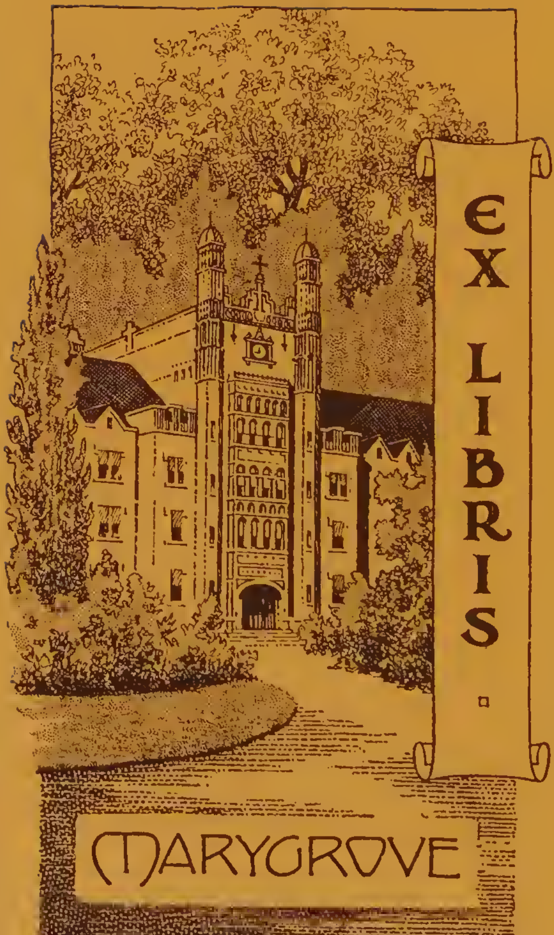

EX LIBRIS
MARYGROVE

READINGS
IN CONTEMPORARY PROBLEMS
IN THE UNITED STATES

308
T21
v. 2.

READINGS
IN CONTEMPORARY PROBLEMS
IN THE UNITED STATES

EDITED BY
HORACE TAYLOR
AND
JOSEPH McGOLDRICK

VOLUME TWO

New York
COLUMBIA UNIVERSITY PRESS
1930

Copyright 1930
Columbia University Press

Published February, 1930

PRINTED IN THE UNITED STATES OF AMERICA
THE PLIMPTON PRESS · NORWOOD · MASS.

NOTE TO VOLUME TWO

THE conditions under which these two volumes of text materials were prepared made necessary the publication of Volume One and Volume Two at different times. The preface of Volume One is intended as an explanation of the entire work.

Besides our colleagues whose names are given in the preface, we have been greatly aided in the selection of materials for this volume by Corliss Lamont and Paul W. Paustian. For their very material assistance in the planning and preparation of this volume, we are deeply indebted to Professors Karl N. Llewellyn and Richard R. B. Powell of Columbia University Law School. Our already large obligation to Dr. C. F. Ansley of the Columbia University Press has been increased by the care with which he has prepared manuscript for the printer and the scholarly and sympathetic criticism by which we have benefited during the preparation of this volume. We are grateful to the authors and publishers whose permissions to reprint have made these volumes possible.

H. T.
J. McG.

Columbia University.

CONTENTS OF VOLUME TWO

35 The Nature of Community Control
  1. Social Coercion . . . . *G. D. H. Cole* 1
  2. Social Control . . . . *J. M. Clark* 2
36 Law and Society
  1. Rights . . . . *W. G. Sumner* 16
  2. Vested Rights . . . . *S. and B. Webb* 19
  3. Law in Society . . . . *K. N. Llewellyn* . . . 24
37 Law and Experience
  1. Law and Experience . . . . *O. W. Holmes* 30
  2. The Empiricism of the Law . . . . *Roscoe Pound* 31
  3. Social and Economic Problems of the Law . . . . *Roscoe Pound* 34
38 Legal Sanctions
  1. Legal Sanctions . . . . *K. N. Llewellyn* . . . 44
  2. The Code of Business Ethics of the International Advertising Association 52
  3. The Hippocratic Oath 55
39 The Common Law
  1. The Customs of the Realm . . . . . *W. Blackstone* 56
  2. The Status of a Wife at Common Law *W. Blackstone* 57
  3. Mr. Bumble and the Law . . . . . *Charles Dickens* 60
  4. The Present Position of Women in Massachusetts . . . . *B. L. Young* 61
40 The Common Law in America . . . . . . *Roscoe Pound* 66
41 The Path of the Law . . . . *O. W. Holmes* 80
42 Legislative Assemblies
  1. The Threefold Function of a Legislature . . . . *Lindsay Rogers* 82
  2. Legislatures in Modern Times . . . . *H. J. Laski* 84
  3. Rotten Boroughs in the United States *J. M. Mathews* 97
  4. Where Statesmen Come From . . . *Lindsay Rogers* 105
  5. Age and Service of Congressmen . . *S. A. Rice* 110
43 Groups and Group Conflicts
  1. The Nature of Group Conflicts . . . *James Madison* 113
  2. From the Old Lobby to the New . . *E. P. Herring* 115
  3. The Articulation of Group Opinion *K. N. Llewellyn* . . . 127

4. Pressure Groups and Government . . *A. G. Dewey* 129
5. How the Power Lobby Worked 132
6. Membership of Typical National Associations 135
7. Labor's Voice Is Heard. 139

44 The Courts as Lawmakers
1. The Judge as Lawmaker . . . . . . *B. N. Cardozo* 141
2. How the Judge Makes Law . . . . *E. R. Thayer* 146
3. A Further Illustration 152
4. Judicial Lawmaking under Modern Conditions . . . . *Roscoe Pound* 153
5. Some Limitations of Judicial Lawmaking . . . . *H. F. Stone* 155

45 The American Doctrine of Judicial Review
1. The Judicial Veto . . . . *Joseph McGoldrick* . . 158
2. Property, Liberty, and Value . . . . *J. R. Commons* 163

46 The Common Law of Today
1. The Law's Uncertainty and Complexity 189
2. The American Law Institute . . . . *W. D. Lewis* 205
3. The Effort to Harmonize Laws in the United States . . . . *W. M. Hargest* 218

47 The Law's Delays
1. Justice and the Poor . . . . *R. H. Smith* 226
2. The Reform of Civil Procedure . . . *E. R. Sunderland* . . . 232
3. The Federal Courts . . . . *Felix Frankfurter* . . . 238
4. Increasing the Power of the Judge . . *W. H. Taft* 247

48 The Jury System
1. Trial by Jury . . . . *J. L. Coke* 254
2. What is Wrong with the Jury System? *A. H. McConnell* . . . 259
3. A Substitute for Trial by Jury . . . *Pendleton Howard* . . 262

49 Some Simpler Paths to Civil Justice . . . *R. H. Smith* 273
50 Lawlessness and the Law . . . . *N. M. Butler* 283
51 Criminal Justice in the American City . . *Roscoe Pound* 287

52 Society and the Delinquent
1. The Defective Criminal . . . . . . *Hoag and Williams* . . 304
2. The Prevention of Crime . . . . . . *E. J. Cooley* 315
3. The Bobbed-haired Bandit . . . . . *An Editorial* 332

53 The Family
1. The American Family . . . . *L. I. Dublin* 334
2. The Decline of the American Family . *W. F. Ogburn*. 342
3. The New Neighbors . . . . *F. M. Eliot* 350

4. Family Disruption and Divorce . . . *M. E. McChristie* . . . 357
54 Marriage in Middletown . . . . *R. and H. Lynd* . . . 367
55 Rural Standards of Living
1. Living Conditions in the Poorer Agricultural Sections . . . . . . *C. E. Allred* 387
2. Facts and Factors with Regard to the Farmers' Standards of Living . . . *E. L. Kirkpatrick* . . . 408
56 Improving Rural Standards
1. Living Standards and Farm Incomes *H. C. Taylor* 419
2. Effects of Differences in Economic Status . . . . *C. C. Taylor* 425
3. Social Aspects of the Coöperative Movement . . . . *E. G. Nourse* 430
4. Rural Health . . . . *W. F. Draper* 433
57 Urban Standards of Living
1. Poverty in an Industrial Community *Paul Blanshard* 438
2. Living at the Professional Level . . *C. G. Woodhouse* . . . 443
3. Park Avenue . . . . *C. B. Thompson* . . . 453
58 Social Responsibilities: Housing . . . . . *S. Eldrige and C. D. Clark* 462
59 Social Responsibilities: Health
1. Public Welfare and Public Health . . *G. E. Vincent* 486
2. Accident Prevention and Compensation . . . . *J. B. Andrews* 495
3. The Control and Elimination of Industrial Diseases . . . . *L. K. Frankel* 506
60 Social Responsibilities: Recreation . . . . *N. Anderson and E. C. Lindeman* 513
61 Social Responsibilities: Education
1. Public Welfare and Public Education *S. P. Capen* 531
2. The City Schools . . . . *W. B. Munro* 537
62 Social Responsibilities: Community Planning
1. The Newer City Planning . . . . . *G. B. Ford* 555
2. Urban Uses of Land . . . . *G. M. Peterson* 579
63 Some Problems of Community Planning
1. Correcting Mistakes . . . . *N. P. Lewis* 596
2. An Industrial City Built to Order . . *John Nolen* 608
3. Some Problems in New Planning. . . *Louis Brownlow* . . . 617
64 Public Budgeting
1. The Significance of Public Budgeting *A. E. Buck* 630
2. A Sample Budget 640

3. The Practical Side of Budget Procedure *C. D. Norton* 642

65 Public Credit

1. The Purposes and Consequences of Public Credit . . . . *H. L. Lutz* 645
2. Credit Policies of the Treasury Department . . . . *A. W. Mellon* 658
3. The Growth of City and State Debts *Irving Fisher* 663

66 Standards of Criticism

1. What Makes a Social System Good or Bad? . . . . *B. and D. Russell* . . . 666
2. A Critique of American Civilization *John Dewey* 679
3. The Good and Evil of the New Industrialism . . . . *Stuart Chase* 681

67 Religion

1. The Forces That Are Destroying Traditional Beliefs . . . . *J. H. Randall, Jr.* . . 690
2. God in More Senses than One . . . *Walter Lippmann* . . . 701
3. The Church in the Acquisitive Society *R. H. Tawney* 704

68 Freedom of Thought

1. On Liberty of Thought and Discussion . . . . *J. S. Mill* 712
2. The Case of Abrams *v.* the United States . . . . *O. W. Holmes* 742
3. The Case of Rosika Schwimmer . . . *O. W. Holmes* 744
4. The Case of Mrs. Dennett . . . . . *An Editorial* 745
5. Strike Cases . . . . *Report of the Civil Liberties Union* 747
69 The Future of Capitalism and Socialism in America . . . . *A Symposium* 751

70 Some Problems of Today

1. Consumers' Coöperation . . . . . . *H. J. Laski* 789
2. This Amazing Prosperity . . . . . . *D. L. W. Worcester* . . 795
3. Progress or Decadence . . . . *H. F. Ward* 797
4. The House Divided against Itself . . *John Dewey* 802
5. The Price of Living Comfortably . . *Raymond Fosdick* . . . 807

XXXV. THE NATURE OF COMMUNITY CONTROL

1. SOCIAL COERCION[1]

By G. D. H. Cole
Fellow of Magdalen College, Oxford

What is the nature of coercive power in the community, and how, and in what forms, is it exercised?

Every association, by the mere fact of its existence, is endowed with some coercive power and actually exercises some such power in the course of pursuing its object. This coercive power is not necessarily recognized by the community, and the courts of law sometimes disallow particular exercises of it by voluntary associations. Nevertheless it exists, and is freely exercised every day. Very many associations claim the right to fine their members for breach of the rules, and nearly all claim the final right of expelling a member who offends against the etiquette or rules of the association. Trade unions and many other kinds of association constantly fine and often expel members, and it is very seldom that their right to do so is challenged by the courts in some particular case. Indeed, often the law of the state, so far from disallowing such associational coercion, backs it up and gives it legal sanction, or at least acquiesces in its decisions. This is especially the case in the "self-governing" professions, the benchers of the Temple, the Law Society, or the General Medical Council in England or their American counterparts, the bar associations or medical societies which freely use coercive power with the approval and sanction of the state without inviting that great coercionist, spiritual and temporal, the church.

There is, however, a distinction between three kinds of coercion which it is important to recognize at the outset. There is one kind of coercion which affects only a man's purse or property, that is, coercion by fine. This is freely employed, not only by the state but by most important types of association. There is a second kind of coercion which affects a man's freedom of action by limiting directly his range of opportunity and self-expression, as, for instance, by disfranchising him or forbidding him to work in a particular factory or occupation. The first is employed by the state and also by other forms of association; the second occurs when the members of a trade union refuse to work with a non-unionist, or expel a man from the union and then refuse to work with him, or when an employers' association "blacklists" a man, and so prevents him from getting a job. "Sending to Coventry" is a less organized example of this kind of coercion.

---

[1] Reprinted by permission from G. D. H. Cole, *Social theory*, F. A. Stokes Company, 1920, pages 128–130.

The third form of coercion is that which directly affects a man's body, by limiting his right of movement, interning him, imprisoning him, or, in the last resort, hanging him, or shooting him, or cutting off his head. In civilized countries and in modern times these forms of diversion are usually, at least in the case of adults, the monopoly of the state. Civilization, however, is often ready to resort to them without calling in the state in its dealings with what are politely called "non-adult" races, and also, in a less degree, in the case of children. The persistence of lynch law in some parts of the world is an exception.

2. SOCIAL CONTROL[1]

By John Maurice Clark

Professor of Economics, Columbia University

In a general way, everyone realizes that private business is no longer private, as this phrase was used a hundred years ago. The managers of large businesses in particular are subject to so many kinds of inquiry, control, and interference that they often feel that their power to manage their businesses has virtually disappeared. Most of these changes have taken place since, say, 1873, and have been going on at an accelerating pace. This period of fifty years has seen the growth of effective control of railroads and of public utilities; while electricity and the telephone have developed, first, into recognized public utilities, and, second, into businesses which transcend state boundaries and thus become essentially national problems. Irrigation, land reclamation, and flood prevention also belong properly in the class of interstate public interests, while radio and aërial navigation have but recently been added to the list. The trust movement and anti-trust laws, conservation, the Federal Reserve system, vast developments in labor legislation, social insurance, minimum-wage laws and compulsory arbitration of industrial disputes, pure-food laws and the growing control of public health, prohibition, control over markets and marketing, enlarged control over immigration and international trade, city planning and zoning, and municipal control of municipal growth in general — all have come about within this period. On the frontier are health insurance, the control of the business cycle and of unemployment, and the insertion of social control within the structure of industry itself, through the "democratization of business." Back of these stand the stabilization of the dollar, and all the questions raised by birth control and the movement toward eugenics, while the control of large fortunes and of the unequal distribution of wealth is an ancient and ever new question which is becoming more and more acute as the masses gain a growing sense of their political power.

---

[1] J. M. Clark, *Social control of business*, University of Chicago Press, 1926, pages 4–10. Reprinted and abridged by permission of the University of Chicago Press and the author.

This many-sided movement toward control cannot be disregarded. Even those who are honestly opposed to it are bound to realize that they cannot simply forbid this tide to rise. It may be guided and directed, its movements made more informed and enlightened, but it cannot be stopped, and no one group can dictate its course. It is the inevitable result of many causes, centering, however, in three things. One is organized large-scale production, another is the growth of democracy, and the third is the growth of science and the changing attitude of the human mind itself toward the world at large and toward human organization in particular, especially the scientific attitude toward social institutions which has been developing slowly throughout the past hundred and fifty years.

This attitude regards institutions as means to ends, but not as sheer bits of social machinery to be tinkered with and altered wholly at the will of the tinkerer. They are themselves in a very real sense living things, evolving according to their own laws, and these laws the human understanding has not yet mastered. Yet their course is subject to some degree of direction, and man is continually calling on them to justify themselves by their results, and trying to improve them where they do not seem to meet this test.

Another cause of change is the growth of democracy; but the most far-reaching forces arise from the changing character of business itself. They are merely the culmination of the forces set in motion when men learned to spin many threads at once on one frame, to drive the whole with steam power, to market the product at great distances by rail, and to back up the ingenuity of the mechanic with the researches of the scientist.

But before we go far in the study of this great movement of control, it will be worth our while to ask the meaning of our title. What is "control"? What is "social control"? And what is "business," or, more broadly speaking, economic activity?

What is "control"?

"Control" means, primarily, coercion: orders backed by irresistible power. In a sense, no coercion is truly irresistible, or almost none. One can always break the law if one will take the consequences — and sometimes the penalty is less than the profits of the offense. But the earmark of coercive control is penalties, imposed by a power which can, if it will, make them heavier than anyone but the most desperate would deliberately incur.

But there are other and less obvious ways of exercising control. In a broad sense, you can control me if you can make me do what you want, no matter what motive you use. However, if you want me to buy your cabbages, and use a "good bargain" as your only argument, no one would say you "controlled" me: control and voluntary bargaining are not the same thing. But if you have cornered the market in cabbages, then you begin to have power over me, though if you had cornered bread, your power would be far greater.

Suppose a laborer canvasses the field and finds no one offering a satisfactory living wage for his grade of work. He is "compelled" to accept less; but whence comes the compulsion? Does it come from the employer who last discharged him, or from an informal control of the market by the employers in general, or from the customs and habits of business, or from the "impersonal and immutable laws" of supply and demand? If he is actually getting the benefit of active competition, he will have chances to get approximately as much as some typical employer can afford to pay him, so that if he is still underpaid it is due to the forces of supply and demand, and not to deliberate oppression. But this occurs chiefly at times of business depression, which is coming to be regarded as a remediable disease of industry, so that society has some responsibility for the compulsions of supply and demand, to the extent that it has power to alleviate them. And this impersonal machinery of private industry evidently has penalties at its disposal which often carry more material hardship than a jail sentence. Yet a jail sentence is coercion such as only the state can employ; while the loss of one's job is merely an incident of "free bargaining." The difference clearly lies, not in the weight of the penalty, but in the fact that putting a man in jail is a positive act, and leaving him to walk the streets looking for work is a negative act for which no one feels fully responsible. It is a mere failure to coöperate in a purely voluntary arrangement for mutual gain.

One possible meaning of "control" is to cause someone to do something apart from his voluntarily deciding to do it. He may consent to something and then find himself committed to consequences which he was not wise enough to foresee. Or he may be governed by the suggestive force of custom, example, or importunity. The most pervasive forces of control are of this intangible sort, just as the most omnipresent penalties are those of opinion. The contempt of one's class is often a stronger force than many a legal punishment. In former times the church wielded the penalties of which men stood most in awe — largely because they were material penalties, either in this world or the next. At present, the power of the church is moral rather than material, and it is often less compelling than the opinion of one's business group. After all, it is easier nowadays to change one's church than one's business.

One very important thing about control is that it is possible to control absolutely the way particular things shall be done without exercising more than an optional control over the people who are doing them. The running of factories is controlled by safety-appliance laws and a deal of other legislation, but no person is subject to those laws except as he (shall we say "voluntarily"?) undertakes to run a factory. But all alike must obey the command, "Thou shalt not steal."

What is "social control"?

"Social control" is control exercised by the entity we call "society." But society never acts as a whole; it never even makes decisions as a unit, much less puts them into effect. The most definite and powerful agent of society is government, and in this country the municipal, state, and Federal governments between them exercise the formal, legal power of control in economic life. But social control is wider than this, as we have already seen. One's newspaper, one's trade union or professional association or chamber of commerce, one's neighbors, one's church, all exercise some measure of social control.

Even the nation is not the whole of society, as witnessed by the fact that our economic society has a most inconvenient way of disregarding national boundaries. The International Labor Office is only one example of the fact that our modern economic society is international.

Since none of our actual organizations takes in everybody who is concerned, social control as we have it is always exercised on behalf of a particular group, something less than the sum of all the human beings who have vital interests at stake. In a broad sense, we may call it social control whenever the individual is forced or persuaded to act in the interest of any group of which he is a member, rather than in his own personal interest. In this sense the nation exercises control, but so also does the trade union. The trade union is not society; it is a particular group within the society, and its interests are in conflict with the interests of other groups. But neither is the nation the whole of society. It is a particular group with interests in conflict with the interests of other groups. There is a real difference of degree, however, because the trade union must work with other groups, while nations are more nearly self-sufficing, being dependent on other nations for only a part of their necessities. They include within their borders most of the conflicting interests of the economic society and can afford to disregard the other interests to a considerable extent, without absolutely disastrous results. Thus we can fairly think of the nation as representing the whole of society *for most purposes*, but that is no reason for failing to see that the trade union, the employers' association or trade organization, the professional association, and many more informal groups all exercise some degree of social control.

Some groups are more inclusive than others, and the more inclusive the group is, the better socialized is the control which it exercises. One of the difficulties of control lies in the fact that the groups whose voice speaks loudest to a given individual are precisely those smallest groups which are farthest from expressing the interest of the whole community. Trade unions can control their members fairly effectively, in matters they have at heart, but what they have most at heart is getting as much as possible out of the employer. There is need of social control of this standard by a group including laborer, employer, consumer, and public, but this group is too heterogeneous to act with the easy effectiveness of smaller groups. Many a man genuinely wants to be moral as his associates see morality, and goes on doing as they do, only to suffer a painful shock when the standard of his associates suddenly has the light of a broader community standard turned upon it. Too often this test reveals merely organized group selfishness.

But when the state acts, is the whole community of its citizens acting? By no means, not even in the kind of state we call democratic. The state is an abstraction. When it acts, it is always some individual official who is really acting — a person with friendships and prejudices, one who is very likely to be more interested in the welfare of the family to whom he goes home at the end of the working day than in the convictions of the persons responsible for the passage of the laws he is carrying out. He is an agent, executing the orders of his superior, with whom he may or may not be in full sympathy. His superior has another superior over him, and so on, up to the head of the department, who has to interpret and enforce laws passed by Congress, with which he may or may not be in full sympathy. There is a certain margin of discretion within which the immediate official makes the law. Within that margin, for all practical purposes, he is the state.

Statutes in America are voted for by the majority of two legislative houses and signed by the chief executive. Yet it commonly happens that not one person who votes for a law gets exactly the law he wants.

Partial concessions are made to the conflicting ideas of different members, or the conflicting interests of their constituents. Back of the legislative process lies the agitation responsible for the framing and introduction of the law. Here a few always take the initiative and bear the brunt. Others lend support of a more mildly active sort; others merely acquiesce. Without attempting to trace all the steps in this process, we may say that a law is always the active work of a minority, with the coöperation of a majority who may be barely willing to vote for it. And after it is on the statute books, it requires some support and coöperation to enforce it. Unless the majority of the citizens will voluntarily obey it because it is the law, it will soon become a dead letter. The law must be upheld in this passive way by a much larger majority than it requires to place it on the statute books in the first place, if it is to be a real success in a democratic country, where the ideal of the "consent of the governed" serves to temper the rule of the majority by the concession of some rights to minorities.

Society's enforcing power is limited. If all who are not in favor of measures resist them and compel society to use its force upon them or see its laws disobeyed, it can make but few rules effective. Such a state will not get beyond the defensive stage of control, in which all its forces are needed to hold it together and preserve the most elementary necessities of safety and order. If a state is to have enough power left to care for welfare in a positive way, it must have a citizenship most of whom are willing to obey even those laws they do not favor — "self-government works best with those who have learned to self-govern."

This is true, even on the assumption that the agent of government is really trying to enforce the law, but this is not to be too easily taken for granted. He is not an automaton, but a human being, and social control as he exercises it depends on the question, Who controls him? How are the state and its officers socially controlled? There is no organized group behind them representing the whole community; if there were, it would itself be the state, and it is precisely because there is no such group that the state is necessary. What lies back of the state is a medley of groups with conflicting economic interests or points of view, and the fusing of these in a social decision is largely the task of the machinery of the state itself.

The meaning of "individualism"

The essential meaning of business, from our present standpoint, is gain-getting subject to the individualistic variety of restraints. The chief of these restraints can be summed up under the protection of the rights of personal security, personal liberty, and private property, working hand in hand with the maintaining of a system of inheritance and the enforcing of contracts and the systems of bankruptcy and poor relief. To these has been added, relatively recently, a legally established institution in the shape of the business corporation, whereby an associated organization acquires by legislative grant some of the privileges of real persons. This is not an individualistic institution, as the term was understood by the individualists of one hundred to one hundred and fifty years ago, but it has become incorporated into the twentieth-century meaning of the term, and has produced far-reaching changes in the character of business.

Can we describe this whole system of control by any simple formula? Not in all its ramifications, certainly, but it has a few prevailing characteristics.

1. In the first place, it prefers to tell people what they shall not do rather than to dictate what they shall do, and the larger part of the duties it imposes are of this negative kind; not all, however: witness the care of children and the enforcing of contracts.

2. Another characteristic is that it prefers to impose duties which are more or less self-enforcing, in the sense that good and moral people will perform them voluntarily, and others will have the general moral sense of the community against them if they refuse. This means that the chief conception of protecting rights is to prevent wrongs — that is, things which are held to be wrong by the existing moral sense of the community.

Other rules may be self-enforcing largely because they represent the customary way of doing things. Custom has a tendency to become law, and it is the kind of law which requires the least enforcement. Sometimes new inventions are grafted on a stem of custom and derive force from it; for instance, traffic rules. There is a long-standing custom of turning to the right in some countries, or to the left in others, and so long as some rule is followed by all, no one cares which it is. Some sort of reliable behavior is an absolute necessity. In recent years the growth of motor traffic has called for more and more complex rules which cannot be based on custom, but the custom of following the accepted system, whatever it may be, makes it easier to enforce the new rules.

3. Thus control under individualism tends to follow precedent, and where it has to deal with new kinds of cases, it does its best to settle them on principles similar to those which have governed in previous cases. Settling things by precedent is economical and relatively safe. One knows that the thing has been done before without fatal consequences, and argues that it can be done again, whereas one can never be quite sure what will be the outcome of an absolutely new experiment. Furthermore, when things are settled in this way, people know what to expect, most business transactions being based on a general idea that things will go on as they have gone on in the past, and that people will construe their obligations in the customary way. Where the underlying conditions change radically, it becomes impossible to follow customs in this complete fashion, and any attempt to do so produces many injustices. This simply means that self-enforcing control cannot take care of all the needs of a rapidly changing society.

4. Individualistic control also involves telling people what they shall do, to a limited extent. It goes into the realm of positive duties where necessary. However, it tries to confine these positive duties to those which are (*a*) "natural" in some such fashion as the care of children by their parents is natural, and thus fairly adequately enforced by the ordinary rules of morality; (*b*) duties to which the individual himself has consented and for which he has received compensation which he voluntarily accepted — namely, the duty of fulfilling contracts; (*c*) other duties, which the state commonly finds it easier to assume itself than to try to impose on private individuals, although some of them may be left to be enforced by public opinion, religion, and morals.

To sum up: Under individualism the state does as little as it can in the way of coercive control, but it always has to do a great deal. The ideal of the individualist is a state which does nothing but protect property and enforce contracts, but there has never been any such state, and never can be, for reasons which will become amply evident as this study proceeds.

Common elements of the task of control

Covering as many different fields as it does, control is not one task but many, yet there are certain common features which must always be taken into account. The first is the need of defining an objective with as much precision as possible. In attempting to do this we are engaging in a search for conditions which are just, wholesome, and generally satisfactory. Nothing short of this can give permanent contentment. But frequently the clash of interests is so insistent and the danger of an open break so serious that long-run considerations are lost sight of and the aim becomes simply to patch up some settlement in which the contending parties will acquiesce, something which will permit the day's work to go on. This is the true objective of arbitrators of labor disputes in more cases than they would be willing to admit.

In such cases it is not wise for the community to attempt to fix all the specific terms of the settlement. Its chief objective is to see that there are proper channels by which the interested parties may express their needs and desires and work out an adjustment of their conflicts. It is not legislation that is needed, but economic constitution-making.

A second task of control is to decide on the kind of pressure to be employed. Shall it be positive or negative, a command or a prohibition? Shall it be formal or informal, regulated or spontaneous, etc.? In order to answer these questions satisfactorily, three other things must be taken into account: the nature of the ultimate source of control, the character of the resistances to be overcome, and the amount of independent discretion which can safely be intrusted to the individuals who act as the transmitting mechanism. It makes a vast difference what a movement has behind it. It makes a difference whether there is a well-formed body of public opinion which knows what it wants, or whether this remains to be built up by the active minority. It makes a difference whether there is a white-hot moral earnestness, a cool intellectual judgment, an exasperated feeling of class hostility, a canny sense of class interests, or sheer apathy. Something very similar is true of the resistances to be overcome, so far as they consist of human feelings. Other resistances are of a more objective sort, including the momentum of things established and their "natural laws," so far as they may have natural laws which furnish obstacles to any desired change. A course must somehow be steered between the mistake of attempting the impossible and the worse mistake of assuming too easily that whatever is, is an unchangeable law of nature.

What is a good system of control?

A good system of control must meet a number of tests, some of them quite difficult. (1) It must be democratic. This means that it must be exercised in the interests of the governed as they see their interests (not as some benevolent overlord might see them). (2) It should know what it wants. This sounds obvious and simple, but after what has been said as to how society acts, one can see that it presents some difficulties. (3) It must be powerful — powerful enough to make an unwilling minority obey the will of the majority. Incidentally, this means that it must be searching enough to detect evasions and prompt enough to forestall violations so far as possible. (4) It must be efficient, and at the same time it must not destroy the efficiency of the thing it is regulating. (5) It must "economize coercion." (6) It must utilize all the strongest and most persistent motives of human nature, both generous and selfish: hope of reward, fear of punishment, and those loyalties, persuasions, and suggestions which have nothing directly to do with rewards or punishments, but which rest upon the deeper fact that the individual is essentially a part of the community. (7) The duties imposed must be simple enough to be understood; and this means, among other things, that social control must follow precedent a great deal of the time. (8) Control must be guided by experience or be wisely experimental. (9) It must be adaptable. (10) It must be far-seeing. It must look beyond the immediate effect of doing a given thing to the further results of leading people to expect it in the future. It is possible to reward unselfish devotion once, but can it be made a habit? (11) And lastly, social control must be capable of progressively raising the level of mankind. In a democracy, where the mass of mankind does the ultimate controlling, this amounts to saying that social control must contrive, somehow, to rise higher than its source. This miracle is possible in the social world, but nothing can make it easy.

Can any system meet all these requirements? They include many a pair of contradictory elements, between which compromise is likely to be both difficult and unsatisfactory, while complete reconciliation seems utterly out of the question. How reconcile liberty with coördination? Modern specialized and integrated industry demands a thorough and efficiently standardized coördination which is threatening the liberty of the common workers to a really serious extent. And how reconcile the liberty of the manager with that of the managed, in any system which requires management? Or how expect to reconcile our modern democracy with real leadership, when one sees how insistently representatives of the people are required to represent the class prejudices of their constituents and are martyred if they fail to conform?

Or how reconcile stability with endless change, the method of trial and error with the demand for a course which is consciously directed toward some known goal, and the short-sightedness of popular policies with the need of building for posterity? Or how reconcile the fundamental requisite, that there shall be but one power which can coerce, with the patent facts of an economy in which there are many minorities each of which has some essential process at its mercy and can use it to coerce the rest? How keep our supreme coercive power organized in geographical units, as seems inevitable, and yet recognize the growing pressure toward organization for control on lines of economic interests? Or how resolve the direct contradictions between the conflicting claims of these economic groups, not only as to their shares in the national dividend, but also as to matters of power and jurisdiction? For instance, is shop discipline an exclusive right of the employer, or should the workers have a share in it, and if so, within what limits? Truly these are matters which cannot be settled by cold logic alone, nor after the fashion of a mechanic. For he does not have to reckon with the feelings of his material or its sense of injustice when he sets some parts to do duty in spots where the stress is hard or the wearing-friction heavy, while other parts are purely ornamental.

Importance of control

The importance of control need hardly be stressed, since without some coördinating system we could not produce, nor consume, nor live at all. And we are becoming acclimated, by slow degrees, to the idea that if the system of control becomes too thoroughly obsolete, the whole social fabric may be shattered by a revolution. More concretely, we are often told that the world possesses productive power enough to enrich the lives of all with leisure and comforts, if not luxuries, and that it is only our stupid system of social organization, or disorganization, which prevents our brains, work, and equipment, between them, from abolishing poverty and making the whole world reasonably well off. Yet the system we have is most often defended on the ground that any available substitute would be even more wasteful and less efficient.

Certain it is that we have, for example, medical knowledge sufficient to stamp out many of mankind's great plagues, if the doctors could only control the behavior of the population or otherwise get their knowledge put into effect. And it is just as clear that we have physical capacity and technical ability to produce more than we do, even allowing for the fact that in many cases the limiting factor would be, not the capacity to manufacture, but the power of the earth to yield increased raw produce. One of the things that keeps us short of our ultimate capacity is a failure of social coördination — the failure to coördinate supply and demand, or demand and need. In the main, no one is morally to blame for this condition, but to cure it is to release enormous powers of production which are now imprisoned, and make a greater contribution to human welfare than any conceivable technical invention could possibly do. At present, the greatest field open to invention for bettering the lot of mankind is the field of improvements in our system of social control.

The difficult task of the citizen

Can we measure up to this opportunity and this need? It is only human to hold that anything that must be done can be done; men would not be where they are if they had not this confidence and the power, at least at times, to make it good. But even such faith must take account of the unpromising material it has to work with, if it is to have its feet on the ground. And the material often appears hopelessly discouraging.

Here, for instance, is the ultimate seat of control: a voter, electing an official who will pass on many public issues, some of which the voter has heard of, but of most of which he is totally ignorant. He is a bewildered, misguided, ineffective sovereign, who cannot prevent his city administration from robbing him. How can he ever hope to elect officials who will carry out far-reaching projects of social betterment calling for energy, prophetic foresight, and that self-sacrificing kind of devotion which is willing to take the risks of social experimentation, for the benefit of posterity? And yet somehow, sometimes, some of these projects are realized.

XXXVI. LAW AND SOCIETY

1. RIGHTS [1]

By William Graham Sumner

The notion that there are such things as "natural" rights is due to the fact that rights originate in the mores, and may remain there long before they can be formulated (because it requires some mental development to be able to formulate them) in philosophical propositions, or in laws. The notion of "natural" rights is the notion that rights have independent authority in absolute right, so that they are not relative or contingent, but absolute.

The interests of men always clash in the competition of life. It is inevitable, on account of the organization of society, that this should be so. Even in the lowest form of the division of labor, that between the sexes, independent interests clash in the distribution of the products. The man there carries his point, if necessary, with the help of the other men, and a precedent is established by force, which through subsequent repetition becomes a law, and carries in itself a definition of rights between men and women.

The question of right or rights can arise only in the in-group. All questions with outsiders are settled by war. It is meritorious to rob outsiders of property or women, or to invade any of their interests; it is meritorious also to repel and punish any efforts of theirs to invade the interests of one's group-comrades. War with group-comrades is "wrong," because it lessens the power of the in-group for war with outsiders. Here, then, is where other devices must be invented. Chiefs and medicine-men imposed decisions which were laws by precedent; they were inculcated by ritual; sanctioned after a few generations by the ghosts of ancestors; enforced by all members of the in-group. The right thing to do was to obey the tradition or "law." Obedience was duty. The notion of societal welfare was taught by the tradition, for the usage of ancestors admitted of no doubt as true and right. Thus law, order, peace, duty, and rights were all born in the in-group at the same time, and they are all implicit in the interest of war-power. The rights were most deeply implicit, and it took the longest time to draw them forth. They came out in proverbs, maxims, and myths — as rules of action in classes of cases, as dicta of the gods, in whose name the shamans spoke. The usual form of a law was a taboo — "thou shalt not." The reason or motive of the taboo needed not to be understood; it was mystic and ritual, because it came from ancestors and was sanctioned by them. There was no reflection on it, for it was authoritative. It was the most imperative form of the mores, because the whole society would enforce it with the highest sanctions. There was no discussion about it; the rule was: obey or perish.

---

[1] Reprinted by permission from William Graham Sumner, *Earth hunger and other essays*, Yale University Press, 1913 ed., pages 79–83.

The earliest taboos probably were about religious rites and duties. In any primitive code the things forbidden range from things of primary and unlimited importance to trivial matters of ritual; in the ten commandments in the twentieth chapter of Exodus, the second, third, and fourth concern matters of little social importance compared with the last five. When taboos are analyzed, and their spirit is developed in a positive form, we get a proposition in the doctrine of rights. For instance, the taboo in the sixth commandment is on murder. The right of the murdered man to live is a positive proposition, capable of some ethical discussion and elaboration, but not capable of enactment in the form of a statute. The right to property is a positive proposition implicit in the prohibition of stealing, but no legislature could enact the right of property in a modern statute. It follows that the "rights" are philosophical propositions implicit in the taboos, and to the modern way of thinking, they seem to be assumed in them; but they were never formulated or thought by anybody before the taboo was started. Hence the modern philosophers invented the notion of "natural" rights to bring in the jural notions in advance of the law. In the American Declaration of Independence, the first paragraph is made up of propositions in political philosophy to serve as a basis of right for the secession of the colonies from the British Empire; they might all be admitted and yet not justify the secession. The Southerners clung to the dogmas and were led by them to believe that secession could be proved in debate, or deduced rationally in logic, but it is entirely impossible to establish rationally a right of revolution; it would be establishing a state on the prime doctrine of anarchy. So it seems that the notions of rights, which are logically antecedent to laws, never can be put into laws. They must remain in the mores, and may be discussed in philosophy, but can be reduced to formulas not at all, or only very imperfectly.

In our times, the phraseology of rights is so current in the mores and in political discussion, that almost every proposition drops into that form. Every civilized state now contains groups who are recalcitrant and protesting, expressing their pain in terms of violated rights. They were the weaker parties in some collision of interests. There had to be a decision at last because life must go on; and the decision was enforced by the society. This was a use of force, just as men settled disputes with women by force. All the great fabric of what we now prize so highly and justly as rights, has come out of such acts of force against some defeated parties; the only difference is that, in thousands of years, the dictates of law and the adjustment of interests have been modified and revised by better views of life. Rights have come to be expressions of the rules of the game in the competition of life. The in-group has become stronger, especially in the higher civilization, as the contentment and satisfaction of all members have become greater. This has depended very much on the economic power of members of the group. If they could work and earn, save and enjoy in security, they have not cared to dispute about rights; but if the struggle for existence has been hard, they have been apt to think that a readjustment of the social conventions which governed the competition of life might be to their advantage. Hard times, therefore, have produced civil conflicts and redefinition of rights.

If in any state the civil power becomes weak, as in Turkey or Central America, rights become insecure, that is, nonexistent. A man is heard declaiming and denouncing; he talks about his "rights" as if they floated in the atmosphere, and ought to come floating to him by a divine spirit in them, independently of all physical or conventional conditions. This is the modern mythology and political metaphysics which we have inherited from the eighteenth century. A defeated litigant comes out of the best court in the most civilized state, angry, denouncing injustice and violation of rights, and declaiming solemn "doctrines" of justice and liberty and, above all, of "rights." A legislative minority also propounds doctrines of rights in order to establish its case against votes; and when it fails, it hugs its great principles of rights. The philosophers, publicists, reformers, and agitators always argue in terms of rights (especially natural rights); they become rebels, revolutionists, anarchists, dynamiters, in the name of rights, and, if they come to prison or the scaffold, they still declaim in terms of the same vocabulary. A criminal becomes a martyr if he can put his crime under some great generalization about rights. We have all been educated by the modern civil mores to think of rights as something metaphysical, above and behind laws and institutions, greater than they, and with some inherent power to transmute themselves out of oratory and resolutions into facts.

It is certainly far wiser to think of rights as rules of the game of social competition which are current now and here. They are not absolute. They are not antecedent to civilization. They are a product of civilization, or of the art of living as men have practised it and experimented on it, through the whole course of history. They must be enjoyed under existing circumstances, that is, subject to limitations of tradition, custom, and fact. To be real they must be recognized in laws and provided for by institutions, but a great many of them, being inchoate, unsettled, partial, and limited, are still in the mores, and therefore vague and in need of further study and completion by courts and legislatures. This further work will be largely guided by the mores as to cognate matters, and by the conceptions of right and social welfare which the mores produce.

2. VESTED RIGHTS[1]

By Sidney and Beatrice Webb

It is difficult for middle-class observers, accustomed to confine the doctrine of "vested interests" to "rights of property," to understand the fervor and conviction with which the skilled artisan holds this doctrine in its application to the "right to trade." This intuitive conviction of natural right we ascribe, in great part, to the long and respectable history of the idea. Down to the middle of the eighteenth century it was undisputed. To the member of a craft guild or incorporated company it seemed as outrageous, and as contrary to natural justice, for an unlicensed interloper to take his trade as for a thief to steal his wares. Nor was this conception confined to any particular section of the community. To the economists and statesmen of the time the protection of the vested interests of each class of tradesmen appeared a no less fundamental axiom of civilized society than the protection of property in land or chattels. "Our forefathers," said the Emperor Sigismund in 1434, "have not been fools. The crafts have been devised for this purpose: that everybody by them should earn his daily bread, and nobody shall interfere with the craft of another. By this the world gets rid of its misery, and everyone may find his livelihood." "The first rule of justice," said the Parliament of Paris three hundred and fifty years later, "is to preserve to everyone what belongs to him; this rule consists not only in preserving those belonging to the person, which arise from the prerogative of birth and of position." "To give to all subjects indiscriminately," argued on that occasion the eminent Advocate-General Séguier, "the right to hold a store or open a shop is to violate the property of those who form the incorporated crafts."

---

[1] Reprinted by permission from Sidney and Beatrice Webb, *Industrial democracy*, Longmans, Green and Company, 1920, pages 565–572.

But this conception of a vested interest in a trade, though it derives sanction among an essentially conservative class from its long and venerable history, does not rest upon tradition alone. To men dependent for daily existence on continuous employment, the protection of their means of livelihood from confiscation or encroachment appears as fundamental a basis of social order as it does to the owners of land. What both parties claim is security and continuity of livelihood — that maintenance of the "established expectation" which is the "condition precedent" of civilized life. And it is easy to trace this social expediency to an elementary observation on personal character. When misfortune arrives in consequence of a man's own act or default, it may well bring the compensation of inducing him to change his habits. But when individuals or classes are overwhelmed by disasters which they could have done nothing to avert, experience shows that, though they may be led to passive resignation, they are not stimulated to self-reliance, and they are apt, on the contrary, to be rendered inert or reckless. We do not expect deliberate foresight or persistent industry from a community living on a volcano. This, indeed, is the fundamental argument against anything which weakens the feeling of security of private property, that is, against any "shock or derangement being given to the expectation which has been founded on the laws of enjoying a certain portion of good." And if we pass from the ownership of property to its occupation under contract, we shall recognize the same argument in the agitation long and successfully carried on by Irish and English farmers for a law which should secure them in their "tenant right." It has now been conceded that we cannot expect occupiers of land to exercise the self-sacrifice, foresight, and energy necessary to keep their holdings in the highest possible efficiency, if the results of their work can be arbitrarily confiscated whenever a landlord chooses to exercise his legal right of ejecting a tenant. A similar consideration lies at the base of the universal conviction in favor of a legally regulated currency. Bimetallists and monometallists alike deplore the disastrous effect on national enterprise if, in the absence of a deliberately settled standard of value, the reasonable expectations of merchants and manufacturers are set at naught by currency fluctuations over which they can have no control. We need not weary the reader by citing other instances (such as the law of patents and copyright, the universal practice of compensation for abolition of office, and all the thousand and one claims of persons "injuriously affected," which are sanctioned by the English Lands Clauses Consolidation Acts), whereby the community has deliberately sought to defend particular persons or classes against the evil effect on character that ensues on finding their efforts and sacrifices nullified by circumstances which they were powerless to avert. When we remember this vast network of defense, built up during the present century in protection of the security and continuity of livelihood of brain-workers and property-holders, it is strange that it is just these classes who fail to comprehend the weekly wage-earner's craving for the same boon. "An industrious man," says one of the workmen's spokesmen, "having learnt a trade, or enabled by any honest means to earn a superior living, is equally entitled to an adequate indemnity if his trade or property is interfered with, or rendered less advantageous, as the owner of a water mill, who has compensation if the water is withdrawn. Every description of property has ample protection, except the poor man's only property, his and his children's industrious habits."

But although the philosophic student may recognize the common origin of all forms of "vested interest" in man's shrinking from the great social evil of a disappointment of "established expectation," he will not so readily admit the virtue of the panacea. It may well be that, as applied to particular forms of personal interest, the remedy may bring with it social evils greater than those which it cures. Thus, public opinion now sides with Turgot and Adam Smith in their denunciation of the evil effects of the close corporations, by which successive generations of craftsmen were legally assured of a customary livelihood, whether they kept pace with the times, or jogged along contentedly in the old routine. In exactly the same strain it has been urged by opponents of the institution of private property, that, at any rate, in the form of inherited wealth, it overreaches its aim, and by securing a livelihood independent of personal exertion, positively counteracts its primary purpose of encouraging each generation to put forth its fullest energies. As against the guilds, modern democracy denies the right of any group or section to monopolize, to the exclusion of less fortunate outsiders, any opportunity of public service. In the same way opponents have argued against private property that, by creating a virtual monopoly of land and capital in the hands of a comparatively small class, the right of exclusive ownership actually hinders whole sections of citizens from that access to the instruments of production by which alone they can exercise their faculties. It is significant that almost the same phrase — "the right to work" — was used by Turgot as an argument against the guilds, and by Louis Blanc as an indictment against private property in capital and land.

It was, however, not these general arguments that induced Parliament to throw over the vested interests of the handicraftsmen. Amid the rush of new inventions, a legal "right to a trade," or a legal limitation of apprentices, whilst it remained an irksome restriction, ceased to safeguard the workman's livelihood. The only remedy for the consequent disturbance of vested interest would have been to have stereotyped the existing industrial order, by the absolute prohibition of machinery or any other innovation. To the statesman, keen on securing the maximum national wealth, any such prohibition appeared suicidal. To the new class of enterprising captains of industry, all restrictions stood in the way of that free use of their capital from which they could derive private wealth. The dispossessed craftsmen could themselves devise no feasible alternative to *laissez faire*, and no one among the dominant classes thought of any means of compensation. As the Industrial Revolution progressed, the objection to any interference with mobility increased in strength. New armies of workpeople grew up, without vested interests of their own, and accordingly opposed to any conception of society which excluded them from the most profitable occupations. Finally, we have the rise in influence of the great body of consumers, loath to admit that the disappointment of the "established expectation" of particular sections of workers is any adequate ground for refraining from the cheapest method of satisfying their ever changing desires. The result is that even trade unionists feel the doctrine of vested interests to be out of date. It is still held with fervor by the more conservative-minded members of every trade, to whom it fully justifies such restrictive regulations as they are able to maintain. It is naturally strongest in the remnants of the time-honored ancient handicrafts. Those who have troubled to explore the nooks and crannies of the industrial world, which have hitherto escaped the full intensity of the commercial struggle, will have found in them a peculiar type of trade-union character. Wherever the doctrine of vested interests is still maintained by the workmen, and admitted by the employers — where, that is to say, the conditions of employment are consciously based, not on the competitive battle, but on the established expectations of the different classes — we find an unusual prevalence, among the rank and file, of what we may call the "gentle" nature — that conjunction of quiet dignity, grave courtesy, and consideration of other people's rights and feelings which is usually connected with old family and long-established position. But this type of character becomes every day rarer in the trade-union world. The old doctrine of vested interests has, in fact, lost its vitality. It is still secretly cherished by many workmen, and its ethical validity is, in disputes between different trade unions, unhesitatingly assumed by both sides. But we no longer find it dominating the minds of trade-union leaders, or figuring in their negotiations with employers, and appeals for public support. Whatever fate may be in store for other forms of vested interests, the modern passion for progress, demanding the quickest possible adaptation of social structure to social needs, has effectually undermined the assumption that any person can have a vested interest in an occupation.

3. LAW IN SOCIETY

By Karl N. Llewellyn

Professor of Law, Columbia University Law School

Wherever men are found living or acting in groups, they are likewise found conforming to an amazing number of uniform ways — folkways, or mores, in Sumner's terms; group habits, in the language of the behaviorist. The number of these ways is almost infinite, in any society. They impose restraint upon the individual at every turn. They govern the time of day, manner, and make-up of his eating, the part of a road or street he will walk or ride or drive on, and whether he will walk or ride or drive; they control the amount and distribution and employment of his leisure time, and even more rigorously, the amount and nature and manner of his work; they control in large measure, even in this day of unprecedented relative looseness of group habit, the people he shall meet, what he shall say to them, both in substance and in form, and what he shall think and say about them before or afterwards. On this and on that minor point each one of us may strike out a little for himself; he may today manage even to shift from the sphere of one group into the sphere of another; but in the end a candid examination will convince him that his way of life and speech and thought is still well-nigh pure conformity to standards made by groups and learned by him consciously or unconsciously.

> The mores are social ritual in which we all participate unconsciously. The current habits as to hours of labor, meal hours, family life, the social intercourse of the sexes, propriety, amusements, travel, holidays, education, the use of periodicals and libraries, and innumerable other details of life fall under this ritual. Each does as everybody does. For the great mass of mankind as to all things, and for all of us for a great many things, the rule to do as all do suffices. *We are led by suggestion and association to believe that there must be*

wisdom and utility in what all do. The great mass of the folkways give us discipline and the support of routine and habit. If we had to form judgments as to all these cases before we could act in them, and were forced always to act rationally, the burden would be unendurable.[1]

It is unthinkable that men should live in groups without such limitations on arbitrary individual action; a day's experience in a household with a family of undisciplined children or even one new puppy is enough to hammer the point home. One other common experience enforces the point: the formation of a new group. Choosing a roommate or a wife, forming a club, a team, or a corporation, forces at once to considering ways or rules of living or working together. Carrying on any such establishment or group presents new problems, and the new problems result continually in the carving of new ways. Joining an established group means learning and adopting, for the purpose, that group's established ways. These instances are chosen because the process involved in them is likely to become conscious. But in the bulk of our learning of established ways, we have no clear perception of the process; and this despite the bewildering number of the lessons. We "grow up into it." The puzzle of how to "Americanize" adult immigrants uncovers something of the thoroughgoing character of the learning.

All of these societal ways impose restraint on the individual. All of them are means of controlling one man's action, of keeping it within the bounds required if his neighbors are to be able to live with him. All are means of keeping his fists from swinging farther afield than the beginning of his neighbor's nose. And one major body of these ways we know as *law.*

The compulsion behind group-ways

Thus far we have spoken as if the established ways of any group, when learned, so entered into a man that his conformance was thereafter automatic. For most of us this is pretty nearly true. There remain peculiar individuals, or peculiar situations for the ordinary individual. There is the thug, the drunken rough-houser, the impact of the fighting word. When, then, we recognize the possibility that this or that individual, through defective or incomplete training, lack of mental capacity, striking individuality, or severe pressure of circumstance, will branch off from the accepted way of his group, we see that the group-way becomes, for others in the group, a norm, a standard, a rule, against which to judge the unusual conduct. When the variation is very slight, or when the norm varied from is conceived as an unimportant norm, or when the circumstances appeal as justifying the variation, the group may disregard his eccentricity; at least, some of them may be content to overlook it. But a wide variation almost always stirs some reaction in the direction of compelling the eccentric to conform, and of visiting pains upon him for his variation; and where the norm varied from is thought of as essential to societal welfare, the urge toward compulsion or punishment is likely to be swift, unreasoned, and all but universal. Suppose you see a man flogging a five-year-old girl in the street.

---

[1] W. G. Sumner, *Folkways*, Section 68.

This urge will result in the application of pressure running all the way from the half-unintended but persistent relegation into the social discard of the man whose clothes and manner are not quite what "our" set thinks proper, to the summary lynching of a horse thief. The pressure may be social, religious, economic, physical, or all in combination. It may be applied by the entire community, as when a Moslem village moves almost as one man to stone a blasphemer, or by Mr. and Mrs. Robert Smith alone, or by a church, lodge, union, political party, town, or any other group. The action taken may be organized loosely or closely, or not organized at all. In all these cases we have degrees and kinds of pressure of public opinion to enforce group norms.

The characteristics of law

Clearly not all of these ways or rules or standards or methods of enforcement belong in the field we think of as *the law*. Clearly some of them do. Clearly, also, the legal ones of them are allied with the others in general intent, and related to them in effect. The immediate questions, then, are: how are we to mark off the field of law? and what relation does it bear to these other mechanisms of social control?

In general, it may be said that the law is the field of social control *in which the state is directly interested and takes a hand.* And this has one immediate and significant consequence: the state is regarded — to date — as the ultimate group, that which admits no superior or even equal, which assumes to control all lesser groups within it, and, finally, in which membership is involuntary, compulsory, and not terminable without the state's consent. Where a rule of law, then, conflicts with any other sort of social rule, the rule of law will — in theory, at least — override the other. And whereas a man ostracized can move away, or one rebuked by a club can resign, he whom the state rebukes must abide the penalty, and, even if he escapes the country, he is likely to be arrested and returned by extradition.

In the next place, the state has in the main reserved to itself the use of *physical force* to enforce its rules; and the threat of open, publicly sanctioned force as a penalty is peculiar to the field of law. If this were to be quite accurate, we should have to restrict it to rules affecting adults, since children are subject to physical correction in the family. And the use of force by other groups than the state — night-riders, strikers, individuals challenging each other to "just come outside" — of course occurs; but it occurs apologetically, unobtrusively where possible, and when the policeman is at the other end of his beat.

In the third place, enforcement of law is *organized*, and *regularly* organized; there are police, sheriffs, judges, and prison wardens whose job that enforcement is. This is in striking contrast to the social cut, the economic boycott, and even to the action of the citizen's committee organized for the occasion, which escorts an undesirable out of town and advises him of the unhealthiness of his return. But it will be noted that the rules of many groups within the state are similarly enforced — from the dean's office of a college through the discipline committee of a union and perhaps even the referee at a prize fight. Thus the rules laid down by such regularly organized lesser groups resemble law more closely than do the more indefinite *customs* or *practices* of unorganized groups; so closely, indeed, that it is desirable to have a special term to designate such rules, and we shall term them *by-laws* — the "laws" of an organized group, but one within and under the ultimate control of the state.

Perhaps it should be noted here that it is not essential to law that its rules should always be observed, nor that every infraction should be penalized. Law is not self-acting; the enforcement is in the hands of men; much that is done contrary to legal rule remains undiscovered. A skillful thief may not be caught; he may be caught and the aggrieved party not complain. But this characteristic of fallibility law shares with every other means of social control yet conceived. It therefore does not serve as a distinguishing mark.

Other agencies of social control

It is obvious from what has gone before that law does not cover the whole field of social control. What relation does it bear to the other agencies in that field? This is hardly the place to answer that question; one of our problems is to find an answer. But some of the possibilities may be suggested.

In the first place, it is clear that our conduct is regulated in all manner of intricate ways in fields left uncovered by law: the style of our dress and conversation, the church we join or do not join, the way we use our tools, etc. Law seems, then, to be more roughhewn, to be coarser-grained, to be less detailed than some other methods of control.

In the second place, law seems — outwardly at least — rarely concerned with a man's inside make-up; it steps in when he kills or steals or assaults or rapes or slanders; not when he merely desires. For these reasons Jellinek thought of law as a sort of skeleton, the bare bones of morals — and, we might add, of custom — which dictated the general structural plan, but did not govern the particular shape or kind or quantity of flesh, and was, without the flesh, useless. If every man should suddenly keep to the letter of the law, and no jot more, society would have about two jumps to the brink.

But Sumner, on the other hand, would argue that law itself takes shape from custom, and cannot vary too far from custom without losing all effect; so that law itself has a skeleton or bare bones of mores by which its structure is controlled, although its exact content in detail may vary in size and shape and texture. He refers to Frederick II's inability to make over the laws of medieval Sicily, to Joseph's failure to reshape the laws of Austria effectively. Nor are present-day issues of the kind lacking: take moonshine making in the southern Appalachians.

Against both these positions, legal philosophers insist on the existence of any number of rules of law which have no connection with morality whatever, and which sometimes stand apart from custom. If a dog is unchained in Massachusetts, leaps across the line, and fastens on the trousers of a man in New Hampshire, where shall the damage suit be brought, and if the two states have different rules as to the liability of the dog's owner, which rule controls? If a letter is properly mailed, accepting an offer for a contract, and the letter goes astray, is the offer accepted or is it not? Shall landowners be allowed to build up to fifteen or up to twelve feet from the curb? Shall the license fee for taxis be fifty or sixty dollars? Shall two witnesses be required for a will, or three? Shall a man become of age at twenty-one or twenty-two? Some of these rules should clearly conform to practice: whether we are to drive on the right or on the left side of the street; whether a bank which has certified a check must pay although the certification was an error. Often, given the rule, a practice will arise if the transaction is one of daily life; but hardly so, where it is not. But to morals such rules are obviously strangers.

Finally, we must consider the fact that not all practices, nor indeed all morals, are common to the entire citizenry; that rules of law may be general, while ways, customs, morals, and especially by-laws, vary from group to group and place to place. If a man or a community has grown up to think of the razor, the stiletto, or the sawed-off shotgun as a proper means of settling differences, the general law of murder or assault will present problems as applied to the action of that man or community. And our increasing specialization, economically, is increasing the number of groups with special and divergent ways and ways of thinking.

XXXVII. LAW AND EXPERIENCE

1. LAW AND EXPERIENCE[1]

By Oliver Wendell Holmes

Justice of the United States Supreme Court

The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become. We must alternately consult history and existing theories of legislation. But the most difficult labor will be to understand the combination of the two into new products at every stage. The substance of the law at any given time pretty nearly corresponds, so far as it goes, with what is then understood to be convenient; but its form and machinery, and the degree to which it is able to work out desired results, depend very much upon its past.

A very common phenomenon, and one very familiar to the student of history, is this. The customs, beliefs, or needs of a primitive time establish a rule or a formula. In the course of centuries the custom, belief, or necessity disappears, but the rule remains. The reason which gave rise to the rule has been forgotten, and ingenious minds set themselves to inquire how it is to be accounted for. Some ground of policy is thought of, which seems to explain it and to reconcile it with the present state of things; and then the rule adapts itself to the new reasons which have been found for it, and enters on a new career. The old form receives a new content, and in time even the form modifies itself to fit the meaning which it has received.

---

[1] Reprinted by permission from Oliver Wendell Holmes, *The common law*, Little, Brown and Company, 1886, pages 1–7.

The process has involved not only the attempt to follow precedents, but to give a good reason for them as well. When we find that in large and important branches of the law the various grounds of policy on which the various rules have been justified are later inventions to account for what are in fact survivals from more primitive times, we have a right to reconsider the popular reasons, and, taking a broader view of the field, to decide anew whether those reasons are satisfactory. They may be, notwithstanding the manner of their appearance. If truth were not often suggested by error, if old implements could not be adjusted to new uses, human progress would be slow. But scrutiny and revision are justified.

2. THE EMPIRICISM OF THE LAW[1]

By Roscoe Pound
Dean of the Law School, Harvard University

When Tom Sawyer and Huck Finn had determined to rescue Jim by digging under the cabin where he was confined, it seemed to the uninformed lay mind of Huck Finn that some old picks the boys had found were the proper implements to use. But Tom knew better. From reading he knew what was the right course in such cases, and he called for case-knives. "It doesn't make no difference," said Tom, "how foolish it is, it's the right way and it's the regular way. And there ain't no other way that I ever heard of, and I've read all the books that gives any information about these things. They always dig out with a case-knife." So in deference to the books and to the proprieties the boys set to work with case-knives. But after they had dug till nearly midnight and they were tired and their hands were blistered and they had made little progress, a light came to Tom's legal mind. He dropped his knife and, turning to Huck, said firmly, "Gimme a case-knife." Let Huck tell the rest:

> He had his own by him, but I handed him mine. He flung it down and says, "Gimme a *case-knife.*"

---

[1] Reprinted by permission from Roscoe Pound, *The spirit of the common law,* Marshall Jones and Company, 1921, pages 166, 167, 173–177.

I didn't know just what to do — but then I thought. I scratched around amongst the old tools and got a pickax and give it to him, and he took it and went to work and never said a word.

He was always just that particular. Full of principle.

Tom Sawyer had made over again one of the earliest discoveries of the law.

Law grows subconsciously at first. Afterwards it grows more or less consciously but, as it were, surreptitiously under the cloak of fictions. Next it grows consciously but shamefacedly through general fictions. Finally it may grow consciously, deliberately, and avowedly through juristic science and legislation tested by judicial empiricism. It is not the least of the achievements of the common law that it discovered and worked out a system of legal development by judicial empiricism at a time when the rest of the world was running to Rome and was seeking to administer justice to modern Europe not by the free judicial methods of the classical jurists but by the hard and fast legislative text and fettered judge of Constantine and Justinian.

A developed legal system is made up of two elements, a traditional or habitual element and an enacted or imperative element. The latter is usually the modern element and at present, so far as the form of the law is concerned, is tending to become predominant. The former is the older or historical element upon which juristic development proceeds by analogy. It is by no means universally true, however, that the imperative element in a legal system is the modern element and the traditional element speaks only from the past. In truth the two act upon and correct each other so that when either, from occupying the field too long, becomes too fixed and rigid, the needed flexibility is restored to the law by its rival. Yet on the whole, the traditional element is by far the more important. In the first instance we must rely upon it to meet all new problems, for the legislator acts only after they attract attention. And even after the legislator has acted, it is seldom if ever that his foresight extends to all the details of his problem or that he is able to do more than provide a broad if not crude outline. Hence even in the field of the enacted law the traditional element of the legal system plays a chief part. We must rely upon it to fill the gaps in legislation, to develop the principles introduced by legislation, and to interpret them. Let us not forget that so-called interpretation is not merely ascertainment of the legislative intent. If it were, it would be the easiest instead of the most difficult of judicial tasks. Where the legislature has had an intent and has sought to express it, there is seldom a question of interpretation. The difficulties arise in the myriad cases in respect to which the lawmaker had no intention because he had never thought of them. Indeed perhaps he could never have thought of them. Here, if we insist on the dogmatic separation of powers, the courts, willing or unwilling, must to some extent make the law under the guise of interpretation; and our security that it will be made as law and not as arbitrary will lies in the judicial and juristic tradition from which the materials of judicial lawmaking are derived. Accordingly the traditional element of the legal system is and must be used, even in an age of copious legislation, to supplement, round out, and develop the enacted element; and in the end it usually swallows up the latter and incorporates the results in the body of tradition. Moreover, a large field is always unappropriated by enactment, and here the traditional element is supreme.

Juristic science works with the materials of the traditional element. It analyzes them and systematizes them, it traces their history, it seeks their philosophical foundations, it compares them with the traditional materials of other legal systems. In this way it prunes away arbitrary rules, molds doctrines into accord with reason, and reconciles inconsistencies. In the future, under the influence of the sociological school in jurisprudence, it will add to the foregoing tasks study of the social operation of rules and doctrines and of the effects which they produce in action, in order to determine how far they achieve the ends of law. Legislation, on the other hand, except as it merely gives form to what has been worked out by juristic science and stamped with approval by judicial empiricism, has for its function to introduce new premises. In the past, under the influence of absolute ideas of law as something eternal and unchangeable, it took a jural revolution through reversion to justice, without law and recourse to some such general fiction as that of equity or natural law to introduce new premises on any considerable scale. Today no such jural revolutions are required. We have come to believe in conscious lawmaking — perhaps, indeed, to have too much faith in what may be achieved thereby. But the true function of codes, as jurists recognize today, is not merely to put the results of past legal development in better and more authoritative form, but even more to afford a basis for a juristic and judicial new start. Thus the jurist works over the traditional materials and the legislator provides new materials. From these the judge makes the actual law by a process of trying the principles and rules and standards in concrete cases, observing their practical operation, and gradually discovering by experience of many causes how to apply them so as to administer justice by means of them. Such has been the common law from the first.

3. SOCIAL AND ECONOMIC PROBLEMS OF THE LAW[1]

By Roscoe Pound

Law has always been confronted with social problems, and in a large sense has always been confronted with economic problems. The occasion for law is that we have to live together in civilized society under conditions in which claims and demands and desires conflict or overlap, and these claims or demands or desires must be adjusted or reconciled so as to bring about a maximum of satisfaction with a minimum of friction and waste, if civilization is to be maintained, furthered and handed on. The problems of law are social because the legal order is a social institution, a highly specialized form of social control. They are economic because the task of social control is one of governing human activities in the satisfaction of unlimited wants out of the limited stock of goods of existence so as to conserve those goods and make them, in a long view, go as far as possible.

Two circumstances have made us newly conscious of social and economic problems as problems of the law, and have made such problems seem peculiarly problems of the law in this time and place. One is that we are in a period of legal transition, in the wake of social and economic transition, following upon an era of legal and social and economic stability. In the era of a systematizing and ordering legal science, which went with this social and economic stability, we had come to think of the foundations of the law as fixed and of changes in law as no more than detailed new applications of old and settled principles. That mode of thought was a response to one set of social and economic problems. It is not sufficing for a new set newly pressing. Thus it is made to appear that such problems are something new. But a second circumstance, no less efficient toward the same result, is the break with the historical and analytical jurisprudence of the immediate past which is characteristic of recent legal thought. The historical and analytical jurisprudence of the last century sought to exclude all social and economic problems, as such, from the domain of the science of law. They sought to set up a self-sufficient jurisprudence in which only authoritative legal materials, regarded as such, should come into consideration. They expected to set up a critique of legal precepts, legal doctrines, and legal institutions in terms of these precepts, doctrines, and institutions themselves. A critique of them in terms of the social and economic problems to which they are addressed has drawn attention to something with which jurists had had no concern. It has made the relation of law to such problems seem something wholly new. It has made it seem that problems of the sort were confronting the law for the first time.

---

[1] Reprinted from the *Annals* of the American Academy of Political and Social Science, Vol. CXXXVI, pages 1–9, March, 1928.

Although the functional thinking of today, with its trying of legal precepts and doctrines and institutions with reference to how, and how far, they achieve the ends of law, makes it look as if the legal order had to do with social and economic problems for the first time, in truth it is but meeting new social problems and new economic problems partly by adaptations and reshapings of the received traditional legal materials and partly with new materials, new methods, and new modes of juristic thought. The problems of the last century gathered round the security of acquisitions and the security of transactions. Hence they called for stabilizing theories, for strict setting off of authoritative legal materials from the extra-legal materials of legislative and judicial lawmaking, and for insistence on judicial rather than administrative justice and a holding down of the administrative element in judicial justice to the minimum. In contrast, the problems of the present gather round the interest in the social life of the individual. Hence they call for a creative legal science. They call for scrutiny of the ideal element in law, something of which the legal science of the last century refused to take account. They call for recognition and definition of received ideals and a differentiation of those which are received and form part of the law from those which are extra-legal and personal to judge or magistrate or lawyer. They call for a critique of the received ideals in terms of the society of the time and its economic problems. They call for individualization in the application of law as distinctly as the problems of the last century called for generalized application and consideration of causes, as it were, in gross. Hence they call for recognition of the administrative element in all justice and not the least in judicial justice.

Economic unification is the conspicuous fact in America of today. The social and economic problems of our law are chiefly problems of adjusting human relations in the unified, machine-dominated, specialized, crowded life, under the eyes of one's fellow men, which goes on in the urban community of today, by means of the legal materials devised or given shape for the independent, individualist, diversified, relatively dispersed and self-determined life of the pioneer, rural, agricultural community of a century ago.

That community was a self-sufficient economic entity. It had a large degree of political independence and was disposed to assert that independence to the utmost. A certain degree of political unification was required for purposes of protection, and the commerce clause of the Federal Constitution testifies to a rising need of some economic unification. But the provisions as to local militia in our bills of rights show how jealous these self-sufficient neighborhoods were of centralized military protection. They remind us how much those neighborhoods feared that the central protecting authority might get out of hand and impose its authority beyond what was required for the common defense against alien enemies. Above all, each group was a free group. Each grown individual, and the pioneer matured early, was free to withdraw and seek more congenial associations, physical or human. Anyone who chafed under the small degree of social control required for the pioneer, rural community could turn into the wilderness and make him a new home.

In a society so organized, the whole spirit of the law, its ideals as well as its precepts and doctrines and institutions, made for a maximum of individual self-assertion, a maximum of local independence, a maximum diffusion of responsibility and a régime of individual free action, judged after the event by preappointed standards, not one of administrative guidance in advance of the crisis of action in order to obviate doubts and disputes. In such a society the doctrine of consociation rather than subordination, the conception that we are with one another rather than over one another, the régime of everyone looking out for himself, expressed the civilization of the time and place as completely as they fail to express the civilization of today.

Political and economic changes

Today we live not so much in households and neighborhoods and more in an indefinite nation-wide interdependence. If we live in some part in groups, the groups are looser, less definite, and larger. The household is a loose group. Household discipline is less relied upon as an agency of social control. For example, truancy and incorrigibility are no longer a mere matter for interview between father and son, but are in the jurisdiction of juvenile courts. A generation ago it was settled that the husband's common-law right of correction was obsolete. Long ago it became American doctrine that husband and wife might have separate domiciles. Today they may have diverse national characters. What is more significant, the household has ceased to be an economic unit even in legal theory, and legal theory is always the last thing to change. Laws as to child labor, juvenile courts, domestic relations courts, newer doctrines as to the claims of husband and wife and parent and child, have made the legal rights to services of wife and child little more than fictions on which to ground certain actions. Moreover, the books now discuss, not defense of a member of one's household, but defense of a guest riding in his automobile. Both the neighborhood and the politically defined locality have ceased to be definite self-sufficient groups. Dwellers in the same urban apartment house often no longer know each other or have any interests in common, unless sometimes to hold a miserly landlord to the minimum of fair treatment which they can extort from him with the aid of a housing commission. Local neighborhoods have ceased to be self-sufficient or self-sustaining.

Where the political group in the past was homogeneous and natural, today it is likely to be heterogeneous and from an economic standpoint artificial. Compare the colony of the Revolutionary period with the state of today. Especially in the West the state boundaries are often but arbitrary lines upon the map. One portion of a political unit may be tributary economically to a center in one state and another to a different center in a third state, or the whole may be dependent upon some great center out of the state. The vital interests of the individual are no longer necessarily in the politically defined geographical area in which he chances to sleep nights. His working life may be in Manhattan and yet our political organization may assign him to New Jersey or Connecticut. The sales agent politically in California may be economically dependent upon Detroit or Flint in Michigan. Thus we may understand why politics mean much less to the city-dweller of today than they meant to the pioneer. To the pioneer they involved a paramount interest in protection. To the city-dweller of today they have no direct relation to his most immediate and vital interests.

American law was formative at a time when it took Washington twelve days to ride from Philadelphia to Cambridge in an emergency. Today any traveler can make that journey in eight hours. Our legal institutions belong to an era when General Grant took nine days to travel by river boat, canal, and rail from Ohio to West Point. Today he could travel by rail from Los Angeles to West Point in half of that time. They are conceived in the spirit of the time when General Sherman, going from New Orleans to San Francisco by the quickest route, spent six weeks in a journey which one may make today in less than half as many days. Indeed New York and Boston are but two days from San Francisco and Los Angeles by air mail. In short, transportation and communication have made of the land one vast overgrown heterogeneous community, but our legal institutions speak from the time of small self-sufficient homogeneous local communities.

Characteristics of our legal system

What these things mean may be understood better if we look at some characteristics of our legal system in their relation to the past and the present.

In receiving and giving shape to English legal materials and legal institutions to meet the needs of a pioneer, rural, agricultural society, characteristically we developed detailed bodies of local law. As one might say, our common law has been a law for Main Street. It has been a law for a society of local communities, each as free as was consistent with the general defense, and each left to itself as far as possible. This tendency has been strong in American common-law institutions. The characteristic Anglo-American legal polity has a background of historical unity and a foreground of individualized local detail.

This polity did well in the society of independent, local neighborhoods of early nineteenth-century America. It is strained to the breaking point in the economically unified society of interdependent communities which obtains today. Uniform legislation on commercial subjects has been going on for a generation. In spite of our inherited distrust of central authority, and concern for local autonomy, we seem to be pushed by the exigencies of our economic unification toward more and more Federal control of what we cannot but feel is the business of the local government. We are driven to learn coöperation as the alternative of a justly dreaded centralization; and coöperation between governmental agencies has always been the weak point of a polity organized around ideas of diffusion rather than concentration of power, of checks and balances, and of accountability to courts rather than to administrative superiors. The local provincialism of our law must give way before conditions in which the everyday transactions of our economic life habitually transcend state lines.

Another characteristic no less marked is the doctrine of supremacy of the law and its corollary, aversion to administration as contrasted with adjudication. The common-law polity seeks to make of everything a legal question, and that means a judicial question. In our formative polity these ideas were organized by the doctrine of separation of powers. Thus subjection of all things to judicial control, invoked in the process of orderly litigation, became the presupposition of our constitutional law. Great questions of legislative policy are left ultimately to the courts for adjudication as to whether there is due process of law, while statutes involving the most vital concerns of life remain in a state of suspense nominally in force but subject to judicial scrutiny at some indefinite time in the future. Administration in matters of the gravest concern is carried on by means of injunctions. The use of the waters of a great lake by the second largest of our metropolitan areas, as against the claims of other great urban areas with respect to harbors and waterways, is made the subject, not of legislative or of administrative arrangement, but of a suit in equity. We have seen open and persistent attack upon this feature of our common-law polity in agitation for recall of judges, recall of judicial decisions, and limitation of judicial power over unconstitutional legislation. It is not unlikely that such attacks presently will be repeated. But these attacks are less significant than the rise of delegated legislation, the shifting of the leadership in political life from legislatures and courts to the executive, the setting up of administrative commissions with mixed powers, and the steady growth of boards and commissions with jurisdiction over what were once taken to be matters of judicial cognizance. It is vain to lament these phenomena. A need of getting things done in a country of quick and far-reaching transportation, far-ramifying interdependence, restless business enterprise, and nation-wide undertakings calling for instant determinations of policy and speedy execution, preclude application of the deliberate methods of judicial determination after the event to the conduct of everyday business. We can no more govern the business life of today by the judicial methods of the last century than we can control the motor traffic in our city streets by the same rule of the road and standard of the reasonable man applied judicially after the accident, which sufficed for the buggies and lumber wagons of a generation ago.

Aversion to legislation

Another characteristic of our common law is its aversion to legislation, its reliance upon judicial empiricism rather than upon texts formulated in advance. But in the economic order of today the need of knowing in advance the details of what may be done and what is prohibited compels resort to legislation whether we like it or not. We cannot expect greatly to diminish, much less to abate, legislative lawmaking activity.

Above all and in a sense summing up the foregoing characteristics, our common law is and has always been intensely individualist. But when we look at our common-law individualism in the light of the social order as it now is, we must recognize that adjustment of this traditional spirit of our law to a different organization of society is not the least of the problems of the legal order. In a pioneer society, the freely self-determining individual unit was a reality. In a society marked by extreme specialization, minute division of labor, and far-reaching economic interdependence, our nineteenth-century ideal of the individual is out of relation to the facts. Our forefathers valued and safeguarded the individual independence and individual initiative without which a social order in the wilderness would have been impossible. We have to learn instead to value and safeguard coöperation, the initiative of the competent specialist, and subjection to rule, without which an urban, industrial social order is no less impossible. We must find how to adjust the classical formulations of common-law individualism in our bills of rights to the needs of twentieth-century life. How to do this is not the least task of the lawyer of the immediate future, and that task will not be the easier in that it involves new modes of thought in comparison with the common-law ideas in which lawyers have been trained.

What is needed, then, is not to enumerate the social and economic problems of the day as simply so many tasks for legislative lawmaking. We need instead to appraise our traditional legal materials with respect to these problems, to see wherein those materials are ill adapted to their new tasks, to see why it is that new precepts devised expressly to meet these problems so frequently fall short of the effects expected of them, and to see how our authoritative materials, old and new, may be made more responsive to the demands upon them. We need to see how the operation of newly enacted or newly discovered precepts or doctrines or institutions may be furthered rather than hindered or defeated by the traditional technique of common-law judges and lawyers, and how such precepts and doctrines and institutions may find effective place in the legal system as a whole.

I venture to think that we shall find the key to these problems in that better understanding of the elements of a system of law which has come with modern legal science. In recognizing the importance of ideals of law, jurists have become conscious that law is more than an aggregate of rules. They have been coming to see that a traditional or authoritative technique of developing and applying legal materials, and a body of received ideals of the end of law, and of what legal precepts should be in view thereof, are elements of the legal system no less than the authoritative precepts, and are more enduring and more decisive for the administration of justice. The traditional technique is the most characteristic element in any system of law. It is this element which gives unity to the law of our forty-eight states, which unifies the laws of England and Canada and America and Australia, which binds the law of today to that of Blackstone's time, to the classical common law of Elizabeth and James I, and even to the law of medieval England.

But the decisive factor in adapting our legal materials to the social and economic problems of the legal order of today will be found in the received ideals of the legal profession which are the background of decision of causes, of interpretation of precepts, of application of precepts, and of development of principles. These ideals give the pattern to which authoritative precepts are shaped in the process of judicial decision and juristic theorizing.

We deceive ourselves grossly when we devise theories of law or theories of judicial decision which exclude such things from "the law." When such ideal pictures have acquired a certain fixity in the judicial and professional tradition, they are part of "the law" quite as much as legal precepts. They give the latter their living content, and in all difficult cases are the ultimate basis of choosing starting points for judicial reasoning, of selecting analogies to be developed, of giving definite form to principles, and thus, in the end, to the decision of controversies. When we seek to exclude them from our formal conception of law, we not only attempt to exclude phenomena of the highest significance for the understanding of the actual functioning of judicial justice, but, as things are, we do the courts much wrong by laying them open to a charge of deciding lawlessly when they do what they must do, and what courts have always been compelled to do, in administering justice according to law.

Our ultimate reliance must be upon education of judge and lawmaker and administrator, on an education which will subject the received ideals to critical scrutiny, will give them definite outline, will try both outline and content by the purposes of the legal order, and will set off the subjective ideals of judge and jurist from those which have been accepted by the legal order and have become a part of the law. Instead of assuming these ideals, uncriticized, ill defined, and unconsciously employed, the demands both of progress and of stability call for a recognition of their controlling and legitimately controlling rôle, organization of them as our legal science has so well organized the precept element of the law, and the critical definition and intelligent employment of them which only scientific study and conscious training can bring about. Until these things have been achieved in some measure our huge biennial output of legislature-made precepts, and the swelling chorus of public complaint at the volume and ineffectiveness of those precepts, are not likely to abate.

XXXVIII. LEGAL SANCTIONS

1. LEGAL SANCTIONS

By Karl N. Llewellyn

We have seen that the law of the state is only one phase of social control. Despite the huge number of rules of law and the great body of police, sheriffs, courts, and other officials engaged in law enforcement, law covers only a small portion of the field of social control. In the main it is left to the family and the school to raise children as workable citizens; in the main it is left to the business unit to organize itself and operate under the initiative of its members; often indeed such an institution as a stock exchange is organized for the transaction of business between different parties and yet almost entirely according to rules of its own. The place of the law in all of this is largely limited on the one hand to reënforcing through the state the already accepted working bases of fundamental morality in such points as theft, sex matters, and performance of contract, and on the other hand to "regulating" the relations of the various groups in society to each other. This "regulation," however, is largely confined to riding the seesaw, leaving the heavy work of swinging it to the parties concerned. The law of the state attempts merely to step in where something is out of gear or out of balance, and attempts to do only so much as is necessary to put the relations between the groups concerned back into gear or workable balance. The law will perhaps undertake to prohibit some particularly objectionable activity (say, conducting gambling houses or discrimination of railroads in the rates charged to competing shippers). Or it will affirmatively require some action which the social welfare seems to call for and the parties most directly interested seem unable to get for themselves (say, limitation of the working hours for women; compulsory liability insurance for automobiles). And it will be observed that the law is particularly useful in such a case whenever a considerable portion of the enterprises in a particular field are ready to run along the desired lines, but running along these lines involves some competitive handicap as against other enterprises in the same field which are not yet ready. For example, limitation of hours that women may work may fail of voluntary introduction even in those plants whose managers would accept it, because competing plants could then underbid them in disposal of their product; and the same situation holds with regard to sanitary working conditions, etc. In such a case a regulative law places all the competitors on an equality as to the matter concerned and speeds up the change, not only among the unwilling but among the willing.

Not only, however, does the law occupy a relatively small field in the actual conduct of citizens, but it depends for its effective operation, even within this field, on many nonlegal factors. If law is obeyed only to the extent that it is enforced, and only because it is enforced, the expense of securing obedience to law will, in most cases, be prohibitively high. This is part of what is meant by the common assertion that law depends upon public opinion. If a rule of law has an application which is at all general, most of the men concerned must obey it without particular reference to enforcement, or we can hardly employ police enough or courts enough to reach the offenders. The other aspect of the case is, that unless the body of the citizenry at large view the law enforcement with at least passive good will, the task of the enforcing officers becomes trebly difficult, slow, and expensive. Knowledge of offenses, detection of offenders, and getting evidence to prosecute become possible, then, only to a highly organized secret police or to a military tyranny.

But against this apparently minor character of law's rôle in society must be set the fact that law *does* ride the seesaw; that to a large extent it steps in precisely where some remedy is needed; that it attempts to bring into adjustment precisely that part of the social mechanism which is most important for the time being because it is out of adjustment. It is no criticism of the doctor's importance that he deals chiefly with sick men. It is sick men who most need doctors.

Lawmaking and law enforcement

From what has been said, the first problem of lawmaking is apparent. We must distinguish between the willful offender and the person of active or passive good will toward the law. So far as concerns the latter, we may expect some attention to the underlying purpose of a rule of law.

He will try, when the law affects his action, to stay within its spirit. As to the willful offender, on the other hand, law is a matter, not of *purposes*, but of *measures*. To him the question is, when may he expect the officials of the state to step in and bother him, and precisely to what extent will they bother him? The game may be worth the candle. If bootlegging is penalized by fine and confiscation of the liquor seized, but the market for further liquor is open and ready and moves at a sufficiently high price level, either fine and confiscation or insurance money in the way of bribery can be afforded as an incident to continuing in the business. It will not make the business unprofitable. If the penalty for publishing libelous statements is only a civil suit for damages, and an astute lawyer can build a corporate structure under which the only company which can be reached in a civil suit is practically without assets, libelous statements can be published with some impunity. *The first crucial problem of lawmaking is, therefore, to construct the measure so that it is adapted to effect the policy intended even as against the willful offender.* What was true in boyhood remains true in manhood: some pleasures to some people are worth the licking. And each rule of law is limited — as against willful offenders — by the penalty that it lays down.

The second crucial problem of law enforcement has to do with the personnel of the enforcing officers. Rules of law, so far as they concern either willful or negligent offenders, are not self-acting. Someone must call them into play. In the field of personal relations (automobile injuries, damages to property, breach of contract) our law leaves the initiative to the injured party and offers him (if he is willing and able to undertake the trouble, the delay, and the expense of hiring a lawyer) an action for damages against a wrongdoer. Clearly the fact that a debt can be sued on is not a major reason for most people's paying their debts. Some pay debts because they feel that the debts are owed. Some pay debts because they cannot stay in business if they don't. Some, being under financial pressure, and fearing the effects of suit at law upon their business reputation, pay debts because suit at law is threatened. Some few are left, however, who have to be sued. And here, as in the case of competing plants and the introduction of sanitary conditions, it may well be believed that the possibility of legal pressure on willful defaulters somewhat raises the level of business honesty in paying debts. If no one could be sued, it might well be that it would take less financial embarrassment to induce people to let their debts run, that there would be more credit frauds, and therefore more competition against honest business men on the part of people to whom the procurement of operating capital was cheap because they had no intention of repaying it.

On the criminal side, too, we find in practice that the major initiative is left with the aggrieved party. It is he who reports the theft or robbery or threat of blackmail; it is he who presses for prosecution. And in the case of those most open to criminal attack (banks, jewelers, etc.) the interested parties have organized themselves and hired special detective agencies to aid the police in discovering and prosecuting offenders. Only in the care of certain peculiar crimes, such as killing, do we find the police pretty regularly acting on their own; although the same may be said for certain types of somewhat standardized protection, such as guarding against pocket picking in public places.

It is clear, then, that the more ancient and familiar of our devices for law enforcement, to wit, the civil suit for damages and the criminal prosecution, depend largely upon the initiative of the individual aggrieved, with whom public officials coöperate only when called upon to act. This, however, presupposes some individual sufficiently bothered by the wrongdoing to take considerable trouble upon himself; and perhaps, as in informing against criminal gangs, considerable risk. It presupposes, further, that the aggrieved individual knows who the wrongdoer is. This is of particular importance in the criminal field. In a loosely organized, shifting community, there is great opportunity for the secret commission of crime. And the rule of law as viewed by the willful offender is not, "Persons convicted of grand larceny will be imprisoned for from three to ten years"; still less, "Persons committing grand larceny will be so treated"; it is rather: "Persons *caught and* convicted of grand larceny will be so imprisoned." Here we meet the matter of police diligence, police skill and police organization as looming very large in the question of detecting an offender; and indeed, as regards the more obvious forms of antisocial crime, these problems are the central ones of law enforcement.

A very different picture is presented where law has stepped in to modify somewhat the conduct of enterprises in the interest of some parties deemed unable to protect themselves adequately — the field of business law (branding, meat inspection, etc.) and of social legislation. Here the precise reason for the legislation is often that the persons sought to be protected are not sufficiently aware of their condition, sufficiently organized, or sufficiently powerful either to recognize an offense when they see it or to dare risk loss of job by taking the initiative in regard to infractions of the law. The infractions, furthermore, are often highly technical matters that only a technician can observe. Take such a matter as the safety of buildings or boilers, in regard to which the planning of fire exits and the avoidance of collapse or explosion are matters which only one who has not only knowledge of the law but also considerable technical information can judge of. The civil suit for damages, indeed even the criminal prosecution after the building has collapsed or the boiler exploded, may have some deterrent effect on other builders, but it misses the major point of the legislation, which is prevention. The work of the law in this field is more like that of hygiene than of the doctor called in to treat a case; indeed, as in the case of control of milk or water supply or of sewage disposal, the law is often aimed at straight hygienic measures. To deal with such complicated matters new legal instruments had to be developed, namely, the administrative departments of government, in which supposed experts in the particular fields are charged with the duty of supervising the activities concerned. In part such supervision may be centralized, as when building permits are issued only after approval of the plans and specifications. In part, however, such supervision involves field check-up, to make sure that the specifications for the building are actually followed out in its construction; to make sure that the conditions of operation in the milk farm continue to be as they were when the license was issued; to make sure that the safety, sanitary, and employment conditions of factories do in fact conform to the legal regulations. Here again the difference between the willful or negligent offender and the man who honestly seeks to comply with the law becomes vital. If the law lacks moral backing in the consciences of those affected, inspection will be a difficult process and the pressure to bribery of or the use of influence on inspectors will be great. If the parties concerned regard the legislation as an impertinent interference with their business and a needless decrease of their profits, such a situation may readily develop. People have curiously complex reactions toward "the law." The same man can be vocal and honest in his belief in the absolute necessity of enforcing such law as runs directly to his interest and passively benevolent toward the enforcement of law at large, at the same time that he feels righteous in evading certain particular legal rules whose pinch *he* feels.

Under these circumstances the problem of personnel again arises to central importance. Does the inspector know his business? Is the inspector hard-working or not? Is he courageous or is he afraid of the offender's political influence? Is he honest or can he be reached?

There is truth in the saying that "the government," for you and me, is the $1,800 clerk at the third desk in Bureau C; and that "the law," in our particular case, is not the purpose which lay behind the rule, nor even the rule on the statute books, but is the action on our case of that same clerk, influenced though it may be by his haste to get off to the ball game, or his urge to take his recent session on the carpet out on the nearest goat. Government *is* personal; law *is* the specific concrete action of government officials. Yet this is only half the truth. The other half lies in the patterns of action we call institutions, the continuity of the traditions of an office, the check-up, ever and again, of the action in individual cases against the rules as they stand on the books, the curiously persistent recurrence (despite laziness, graft, influence, and ignorance) of loyalty to the office and responsibility in the officer. The reality of law in action is found in shifting flux between these poles: the institution and the personnel.

Not least in importance is the problem, is the inspection easy to make, or hard? If the enterprise is highly organized, its political influence may be great, both in preventing legislation not desired and in inducing inadequate enforcement if that legislation is passed. On the other hand, it is then easy to see and reach if enforcement is once vigorously undertaken. And if not only the enterprise but the industry is highly organized, there is an excellent chance of enlisting the coöperation of some of the enterprises in checking up on others, a possibility to which we shall recur in dealing with business associations. If, however, the plants are small and scattered, check-up is extremely difficult and so-called lax enforcement (which means substantially, as to willful or negligent offenders, nullification of the rule of law involved) is common.

The law in relation to morals and custom

In regard to the relation of law to morality and custom, it is to be noted that those *newer* rules of law which are especially the outgrowth of our urbanization and industrialization must, according to the nature of society, suffer most from the absence of heavy moral backing. Such rules are likely to be felt as too technical to have any relation to morals. And they are likely to be the result of the victory of one group over another in a legislative battle of interests; in such a case the defeated group can hardly be expected to recognize either the wisdom or the morality of the rules imposed upon them against their will. Which means that the problem of active enforcement becomes acute.

Another type of rule requiring administrative enforcement is presented by the traffic problem. The conflict there reaches an acute form between the immediate desire of the party concerned to go fast, or to reach his destination, and the policy of restriction which may well be obviously footless at the moment but which proves in the long run to reduce accidents. Left to himself, the individual will pretty regularly resolve the balance of probabilities in his own favor and assume that luck will be with him if he takes a chance. When the accident figures grew so great as to show that the civil suit for damages had become rather useless as a regulatory device, the motorcycle policeman was introduced. The increase in cars almost at once offset his utility. Traffic police and traffic lights amount to an attempt, by taking the decision in each instance out of the hands of the individual driver, to further his long-run interests at the expense of his immediate desire. And probably in no place can the effect of the law in changing common practice be better observed than in the introduction of traffic regulation systems. Nor is there any place in which the constant tendency of individuals to break over is more readily observable, together with the operation of legal enforcement on stiffening the course of custom.

As has appeared repeatedly in the above, lawmaking and law enforcement go hand in hand, especially with regard to regulation of technical activities, with the development of self-control and self-regulation by interested groups. This is peculiarly true in regard to the regulation of competitive practices in business. The modern interest in stabilization of business has led executives to reëxamine some phases of unlimited competition and to acquire great interest in the establishment of rules of the game which put all parties concerned on a competitive equality and which are so drawn as to make profitable operation possible. The simplest form of competing, for instance, is price cutting. When price cutting progresses to the point where, in eagerness for orders, plants cut prices below cost, it becomes of great interest to the better organized firms in the line to organize an association and to place the cost-accounting facilities of the association at the disposal of those smaller plants which, in ignorance of their own interest, are driving themselves (and others) into bankruptcy. The same association, moreover, is equipped to make rules against bribery of purchasing agents and, what is more to the point (since such rules already exist in the law), to move with some effectiveness toward enforcing them. To a considerable extent such self-regulation of an association falls within the field left open by the law to individual or group adjustments. To a considerable extent it leads, as has been indicated, to more effective enforcement of existing legal rules — that is to say, to more effective regulation *in practice* of the parties to those rules. But not to be overlooked is a third phase of the activities of such associations — that leading to more adequate adjustment of the legal rules of the needs of those concerned. The members of the association know their own business and can devise measures better adapted than an outsider's would be, to effect a given policy. Technical regulation demands technical knowledge. So far as legislative policy coincides with the association's interest, this help is clear and useful. The difficulty arises, of course, when the legislative attempt is, to regulate the association or its members in the interests of someone else. And here again one sees the utility (as well as the dangers) of the government commission of supposed experts in the field. They are better able than the average legislator to judge which part of the association's desires is "legitimate" and which part not; they are better able to devise rules and means of enforcement which, in the light of the circumstances, will be workable. Here we have one major reason for the huge delegation to administrative bodies in modern times of the power to make regulations. Finally, by virtue of dealing constantly with the association and enterprises concerned, the administrative officials are able to persuade them into the voluntary adoption of some changes that may not be welcome, in return for compromises on other regulations or on ill-drawn rules. The parallel between this and the professional criminal's plea of guilty in the prosecutor's office is somewhat striking.

One sums up, then, with this: purposes are not self-acting; they must be incorporated into legal measures; here is one great chance for error, friction, waste. Legal measures or rules are not self-acting; someone must call them into play; here is a second great occasion for error, friction, waste, even corruption. Where there is no single specially aggrieved party who knows who the offender is, and is able and willing to call on the officials, more and more of the job of making law real must move into the hands of the government official; in technical fields he is, for the most part, the only resource. But all the efforts of government would be rather hopeless (unless law is to be made the sole business of the community: martial law) but for the fact that law enforcement has at least the passive backing of the community at large; and the government efforts are exceedingly difficult and costly unless the rule in question has the *active* backing of some good part of the individuals concerned.

2. THE CODE OF BUSINESS ETHICS OF THE INTERNATIONAL ADVERTISING ASSOCIATION[1]

Recognizing that implicit confidence between producers, distributors, and consumers is the bulwark of modern business and that good will is indispensable to the permanency and continuity of service, Advertising, whose function is essentially creative and constructive, has an obligation and responsibility to so conduct itself in its own and in the public interest as to make it easier to do right and harder to do wrong, to place business on a higher plane, to make a prosperous and happy nation and a better place to live.

In order that Advertising may continue to properly perform its function and render increasing public service of the highest order, we the members of the International Advertising Association subscribe to the following declaration of principles as a practical guide for the conduct of the Advertising business as a whole, for the various Departments, and for each individual enterprise, and individually pledge ourselves to coöperate in their maintenance.

---

[1] This code was formulated by the Committee on Standards of Practice of the Advertising Commission, Colonel H. H. Burdick, Chairman, and adopted by the Commission at its meeting in Chicago, May 14, 1929. It was endorsed by the Board of Governors of the International Advertising Association and adopted by the Association at the twenty-fifth annual meeting in Chicago, May 16, 1929.

Principles of Business Conduct

1. To conduct our business on the principle of truth, honesty, and integrity in every transaction.

Practices complementary to Principle No. 1

a) Consider first the interest of the public, in particular those we serve.

b) Support, unequivocally, the principle of "Truth in Advertising."

c) Avoid all manner of exaggeration, misrepresentation, and falsification, confining all statements to verified facts.

d) Refuse all false, malicious, indecent, or misleading advertising.

e) Discourage and refrain from all deceptive or coercive methods.

f) Respect the spirit and letter of all contracts and neither expressly nor impliedly promise performance which cannot reasonably be filled.

2. To encourage and maintain fair and friendly competition, with full recognition of the rights of others in our own and other businesses.

Practices complementary to Principle No. 2

a) Refrain from derogatory or disparaging statements that tend to injure or discredit legitimate competitors or other business or industry, relying for success on the merits of our own products or service.

b) Avoid unfair discrimination, seeking a just compensation with a fair profit for service rendered.

c) Seek amicable settlement of all controversies, based on facts, not theories; avoid litigation of controversial questions and resort to impartial arbitration if mutual agreement cannot be reached and a properly organized civil body is available for this purpose.

3. To seek lasting success and efficient service to our customers and the public by thorough and unceasing study of our business and the business of our clients.

Practices complementary to Principle No. 3

a) Join in mutual research as to the facts and forces affecting the business of advertising as a whole.

b) Supply full and impartial information, subject to proper and authentic verification.

c) Strive for improvement in product and service through efficient methods of merchandising and marketing.

4. To disseminate the truth about advertising so that there will be a better understanding of its function and application and an increasing acceptance of its value.

Practices complementary to Principle No. 4

a) Coöperate with all organizations and individuals in every movement looking to the betterment of advertising and the advertising business as a whole.

b) Formulate and initiate a program of education in advertising practice and the general use of advertising in business.

c) Supplement the efforts of other agencies and educational institutions in teaching the technique and effective use of advertising.

The Hippocratic Oath

Candidates for the Degree of Doctor of Medicine:

IN OUR profession it is a custom, established more than two thousand years ago, that no one may be admitted to its honors who has not first expressly taken upon himself its obligations. ❡ Now, therefore, in behalf of your elders, I call upon you to take, as we have taken before you, the oath which bears the name of Hippocrates. ❡ The language in which our predecessors first pronounced it is no longer spoken, the very gods whom they called to witness have been discarded, but still we can find no nobler words than the most ancient in which to hand down the traditions of our calling.

You do solemnly swear, each man by whatever he holds most sacred —

That you will be loyal to the Profession of Medicine and just and generous to its members.

That you will lead your lives and practice your art in uprightness and honor.

That into whatsoever house you shall enter, it shall be for the good of the sick to the utmost of your power, you holding yourselves far aloof from wrong, from corruption, from the tempting of others to vice.

That you will exercise your art solely for the cure of your patients, and will give no drug, perform no operation, for a criminal purpose, even if solicited; far less, suggest it.

That whatsoever you shall see or hear of the lives of men which is not fitting to be spoken, you will keep inviolably secret.

These things do you swear. Let each man bow the head in sign of acquiescence.

And now, if you will be true to this, your oath, may prosperity and good repute be ever yours; the opposite, if you shall prove yourselves forsworn.

XXXIX. THE COMMON LAW

1. THE CUSTOMS OF THE REALM[1]

By Sir William Blackstone

This unwritten or common law is properly distinguished into three kinds: (1) General customs; which are the universal rule of the whole kingdom, and form the common law, in its stricter and more usual signification. (2) Particular customs; which, for the most part, affect only the inhabitants of particular districts. (3) Certain particular laws; which, by custom, are adopted and used by some particular courts, of pretty general and extensive jurisdiction.

I. As to general customs, or the common law properly so called; this is that law, by which proceedings and determinations in the king's ordinary courts of justice are guided and directed. This, for the most part, settles the course by which lands descend by inheritance; the manner and form of acquiring and transferring property; the solemnities and obligation of contracts; the rules of expounding wills, deeds, and Acts of Parliament; the respective remedies of civil injuries; the several species of temporal offences, with the manner and degree of punishment; and an infinite number of minuter particulars, which diffuse themselves as extensively as the ordinary distribution of common justice requires. Thus, for example, that there shall be four superior courts of record, the Chancery, the King's Bench, the Common Pleas, and the Exchequer; — that property may be acquired and transferred by writing; — that a deed is of no validity unless sealed and delivered; — that wills shall be construed more favorably, and deeds more strictly; — that money lent upon bond is recoverable by action of debt; — that breaking the public peace is an offense, and punishable by fine and imprisonment; — all these are doctrines that are not set down in any written statute or ordinance, but depend merely upon immemorial usage, that is, upon common law, for their support.

---

[1] *Commentaries* (1765), Book I, Section 67.

Some have divided the common law into two principal grounds or foundations: (1) Established customs; such as that, where there are three brothers, the eldest brother shall be heir to the second, in exclusion of the youngest; and (2) Established rules and maxims; as, "that the king can do no wrong," "that no man shall be bound to accuse himself," and the like. But I take these to be one and the same thing. For the authority of the maxims rests entirely upon general reception and usage; and the only method of proving that this or that maxim is a rule of the common law, is by showing that it hath been always the custom to observe it.

But here a very natural, and very material, question arises: how are these customs or maxims to be known, and by whom is their validity to be determined? The answer is, by the judges in the several courts of justice. They are the depositaries of the laws; the living oracles, who must decide according to the law of the land. The knowledge of that law is derived from experience and study; from the *viginti annorum lucubrationes*, which Fortescue mentions; and from being long personally accustomed to the judicial decisions of their predecessors. And, indeed, these judicial decisions are the principal and most authoritative evidence that can be given of the existence of such a custom as shall form a part of the common law. The judgment itself, and all proceedings previous thereto, are carefully registered and preserved, under the name of records, in public repositories set apart for that particular purpose; and to them frequent recourse is had, when any critical question arises, in the determination of which former precedents may give light or assistance.

2. THE STATUS OF A WIFE AT COMMON LAW[1]

By Sir William Blackstone

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and *cover*, she performs everything; and is therefore called in our law French a *feme-covert*, *foemina viro coöperta;* is said to be *covert-baron*, or under the protection and influence of her husband, her *baron*, or lord; and her condition during her marriage is called her *coverture*. Upon this principle, of a union of person in husband and wife, depend almost all the legal rights, duties, and disabilities that either of them acquire by the marriage. I speak not at present of the rights of property, but of such as are merely *personal*. For this reason, a man cannot grant anything to his wife, or enter into covenant with her: for the grant would be to suppose her separate existence; and to covenant with her, would be only to covenant with himself: and therefore it is also generally true, that all compacts made between husband and wife, when single, are avoided by the intermarriage. A woman indeed may be attorney for her husband; for that implies no separation from, but is rather a representation of, her lord. And a husband may also bequeath anything to his wife by will; for that cannot take effect till the coverture is determined by his death. The husband is bound to provide his wife with necessaries by law, as much as himself; and, if she contracts debts for them, he is obliged to pay them; but for anything besides necessaries he is not chargeable. Also if a wife elopes, and lives with another man, the husband is not chargeable even for necessaries; at least if the person who furnishes them is sufficiently apprised of her elopement. If the wife be indebted before marriage, the husband is bound afterwards to pay the debt; for he has adopted her and her circumstances together. If the wife be injured in her person or her property, she can bring no action for redress without her husband's concurrence, and in his name, as well as her own: neither can she be sued without making the husband a defendant. There is indeed one case where the wife shall sue and be sued as a feme sole, viz., where the husband has abjured the realm, or is banished, for then he is dead in law; and, the husband being thus disabled to sue for or defend the wife, it would be almost unreasonable if she had no remedy, or could make no defense at all. In criminal prosecutions, it is true, the wife may be indicted and punished separately; for the union is only a civil union. But in trials of any sort they are not allowed to be witnesses for, or against, each other: partly because it is impossible their testimony should be indifferent, but principally because of the union of persons; and therefore, if they were admitted to be witnesses *for* each other, they would contradict one maxim of law, *nemo in propria causa testis esse debet* [no one is allowed to be a witness in his own cause]; and if *against* each other, they would contradict another maxim, *nemo tenetur seipsum accusare* [no one is bound to accuse himself]. But, where the offense is directly against the person of the wife, this rule has been usually dispensed with; and therefore, by statute 3 Henry VII. c.2, in case a woman be forcibly taken away, and married, she may be a witness against such her husband, in order to convict him of felony. For in this case she can with no propriety be reckoned his wife; because a main ingredient, her consent, was wanting to the contract: and also there is another maxim of law, that no man shall take advantage of his own wrong; which the ravisher here would do, if, by forcibly marrying a woman, he could prevent her from being a witness who is perhaps the only witness to that very fact.

---

[1] *Commentaries* (1765), Book I, pages 442–445.

In the civil law the husband and the wife are considered as two distinct persons, and may have separate estates, contracts, debts, and injuries; and therefore in our ecclesiastical courts, a woman may sue and be sued without her husband.

But though our law in general considers man and wife as one person, yet there are some instances in which she is separately considered; as inferior to him, and acting by his compulsion. And therefore all deeds executed, and acts done, by her, during her coverture, are void; except it be a fine, or the like matter of record, in which case she must be solely and secretly examined, to learn if her act be voluntary. She cannot by will devise lands to her husband, unless under special circumstances; for at the time of making it she is supposed to be under his coercion. And in some felonies, and other inferior crimes, committed by her, through constraint of her husband, the law excuses her: but this extends not to treason or murder.

The husband also, by the old law, might give his wife moderate correction. For, as he is to answer for her misbehavior, the law thought it reasonable to intrust him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his apprentices or children; for whom the master or parent is also liable in some cases to answer. But this power of correction was confined within reasonable bounds and the husband was prohibited from using any violence to his wife, *aliter quam ad virum, ex causa regiminis et castigationis uxoris suae, licite et rationabiliter pertinet* [otherwise than is a man's lawful and reasonable right for the purpose of governing and correcting his wife]. The civil law gave the husband the same, or a larger, authority over his wife: allowing him, for some misdemeanors, *flagellis et fustibus acriter verberare uxorem* [to beat his wife severely with whips and clubs]; for others, only *modicam castigationem adhibere* [to administer a moderate chastisement]. But with us, in the politer reign of Charles the Second, this power of correction began to be doubted; and a wife may now have security of the peace against her husband; or, in return, a husband against his wife. Yet the lower rank of people, who were always fond of the old common law, still claim and exert their ancient privilege: and the courts of law will still permit a husband to restrain a wife of her liberty, in case of any gross misbehavior.

These are the chief legal effects of marriage during the coverture; upon which we may observe, that even the disabilities which the wife lies under are for the most part intended for her protection and benefit: so great a favorite is the female sex of the laws of England.[1]

3. MR. BUMBLE AND THE LAW[2]

By Charles Dickens

"I HOPE," said Mr. Bumble, looking about him with great ruefulness, as Mr. Grimwig disappeared: "I hope that this unfortunate little circumstance will not deprive me of my parochial office?"

---

[1] A married woman was also incapable of making a will or of deeding real or personal property. Her minor crimes, if committed in the presence of her husband, were presumed to be under duress, and he, not she, was punished for them. (*Commentaries*, Book II, pages 294 and 497; Book IV, page 28.) Even at this late day all the furnishings of the home are the sole property of the husband, including a piano which the wife, a talented performer, could play and her husband could not. (Clayburgh *v.* Clayburgh, *N. Y. Law Journal*, December 14, 1929.) Articles made by the wife for the household become the sole property of the husband. She is entitled in a separation to articles of a nature such as to permit only of her purely personal use. — The Editors.

[2] *Oliver Twist*, Chap. LI.

"Indeed it will," replied Mr. Brownlow. "You may make up your mind to that, and think yourself well off besides."

"It was all Mrs. Bumble. She *would* do it," urged Mr. Bumble; first looking round to ascertain that his partner had left the room.

"That is no excuse," replied Mr. Brownlow. "You were present on the occasion of the destruction of these trinkets, and indeed are the more guilty of the two, in the eye of the law; for the law supposes that your wife acts under your direction."

"If the law supposes that," said Mr. Bumble, squeezing his hat emphatically in both hands, "the law is a ass — a idiot. If that's the eye of the law, the law is a bachelor; and the worst I wish the law is, that his eye may be opened by experience — by experience."

4. THE PRESENT POSITION OF WOMEN IN MASSACHUSETTS[1]

By B. Loring Young

Speaker, Massachusetts State House of Representatives

Many persons are now demanding that complete equality between the sexes — political, civil, and legal — be guaranteed by constitution or statute. The problem is difficult and complicated, and should be approached without prejudice. Let us learn all we can, both of law and fact, before we come to a conclusion.

The "suffrage" amendment was proclaimed as part of the Federal Constitution on August 26, 1920. The Constitution and laws of the United States made in pursuance thereof are ". . . the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." The Federal law is supreme, subject to the necessary limitation that the law must be within the field covered by the Federal Constitution. This fact should always be kept in mind; first, because the field of Federal authority is constantly being widened, as in the case of the "suffrage" and "prohibition" amendments; and second, because with this widening authority state laws and customs which have given local satisfaction may be nullified and superseded by Federal legislation not in conformity with local needs and sentiments.

---

[1] Reprinted by permission from *Massachusetts Law Quarterly*, February, 1923, pages 27–31.

The "suffrage" amendment provided that: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex. Congress shall have power to enforce this article by appropriate legislation."

This amendment guaranteed to the women of Massachusetts the right to vote on equal terms with men. It did not specifically grant to women the right to hold public office. That was a further step in political equality which had to be established by our own legislature. A special session was held in December, 1920, for the purpose of adopting the latest consolidation of the statutes. Because of lack of time, the broad question of eligibility of women to state and county office was not considered, but women were made eligible for municipal office (Chapter 633 of the Acts of 1920). The legislature of 1921 enacted Chapter 449, making women eligible for election or appointment to all state and county "offices, positions, appointments, and employments. . . ."

Political equality has thus been achieved for the women of Massachusetts. This does not necessarily imply full civil and legal equality. This fact was known to the legislature of 1922, and two important pieces of remedial legislation were enacted. The first was Chapter 461, giving to wives equal right with husbands in the appointment of testamentary guardians for their children. The second was Chapter 305, allowing married women in certain cases to have a separate domicile for purposes of voting and registration.

The present session of the legislature has continued this policy. The Committee on the Judiciary has reported in favor of House Bill No. 1344, which, if enacted, will require the consent of both parties to the marriage of a minor, instead of merely the consent of the father, as under the present law. The passage of this bill will remove an obviously unfair discrimination between the sexes. . . .

It is doubtless true that many other remedial statutes should be enacted.

Two methods have been suggested of meeting the situation. The first is the "blanket equality" programme suggested by the National Woman's Party, consisting of a constitutional amendment at Washington and a blanket equality statute in every state. The second method is that which we have already adopted in Massachusetts, of seeking out those inequalities which should be eliminated and doing so by remedial legislation.

I strongly favor the second method, and for several reasons:

1. I think it unsound and dangerous to pass any bill, no matter what the subject matter may be, in blanket terms without being certain of its ultimate legal effect and without ascertaining, after the most exact study, the various provisions of statute and common law which will be repealed or amended thereby;

2. I believe that the many complicated questions involving the civil and legal rights of men and women should be considered as separate problems and that each, if a change is needed, should be settled by a specific bill, the purpose and result of which can be clearly ascertained.

3. I believe that every statute of general application should be passed as a specific amendment of or addition to the General Laws of 1921, and should specify by chapter and section every repeal or amendment of existing law which is intended. This last revision was the product of six years' study at a cost of $500,000. It is very difficult even for good lawyers and almost impossible for laymen to find out what the law is if each successive legislature passes new Acts which repeal or amend the statutes but which neglect to specify exactly what chapters and sections of existing law are affected thereby. This is a new theory in the legislative process of Massachusetts and has been highly commended both in this state and elsewhere. It will result in a great saving of time and labor to the state government, the judges, the lawyers and the general public. The passage of a complicated "blanket equality" bill would break down this important reform in the mechanics of lawmaking. . . .

The National Woman's Party has proposed an amendment to the Federal Constitution in the following terms:

> Section 1. No political, civil, or legal disabilities or inequalities on account of sex, or on account of marriage unless applying alike to both sexes, shall exist within the United States or any place subject to their jurisdiction.
>
> Section 2. Congress shall have power to enforce this article by appropriate legislation.

If men and women are to be placed by a Federal constitutional amendment on terms of complete legal and civil equality, the immediate result will be the abrogation of every state law which conflicts with that principle. This naturally follows from the supremacy of Federal law within the limits of Federal jurisdiction.

Men under Massachusetts law are under legal obligation to support their wives. Non-support is a crime punishable by the criminal courts. Non-support is, under certain aggravated circumstances, a cause of divorce against the husband. Our statutes do not contain reciprocal provisions compelling the wife to support the husband or allowing a husband to divorce his wife because she cruelly refuses or neglects to support him. The immediate effect of the proposed constitutional amendment would be to nullify the entire non-support law of Massachusetts and to leave wives without legal remedies, in case their husbands should refuse longer to support them.

The state has imposed this obligation of support upon the husband, not as a favor to women but as a means of protecting the home, the basic unit of our civilization. It should not be lightly cast aside in the pursuit of some doctrinaire theory of absolute legal equality.

There is a large body of statute law in Massachusetts for the protection of women in sex relations. Men and women are subject to punishment for different crimes. Is it not possible that the proposed Federal amendment might be construed as abrogating all our criminal statutes dealing with rape, abduction, abuse of female children, and various other offenses which by natural laws have to be considered differently as regards men and women? This certainly cannot be intended by anyone, but the possibility of such a terrible result is proof that we should move with caution in any attempt to make men and women identical beings with identical rights, privileges, immunities, and disabilities under the law.

Men and women in Massachusetts are on a practical equality in so far as inheritance and all other property rights are concerned. There are, however, certain technical differences which have come down from early English law. Widows have certain rights of dower, homestead and quarantine. The widow in straitened circumstances may be granted a widow's allowance from the deceased husband's estate which takes precedence even over debts. Widows with children receive so-called mother's pensions under state law. The rights of women in these matters are not identical with the rights of men. These rights are extended to women not merely for their own benefit but for the welfare of the community.

The lawmaking power in Massachusetts has never regarded women as on equal terms with men in industry. We have provided by law a forty-eight-hour week for women in certain manufacturing and mercantile pursuits. We prohibit night work for women in certain activities. Our minimum-wage law applies to women, but not to men, and women are prohibited from certain occupations within a specified period of childbirth. These various statutes rest upon the fundamental proposition that women cannot, in industrial matters, be allowed that freedom of contract which is allowed to men; that each woman, as a potential mother, must be safeguarded from the danger that she be treated merely as a wage-earning unit in industrial life. To limit the contractual rights of men in many of these ways would be regarded by the courts as a deprivation of liberty and property under the fourteenth amendment to the Constitution of the United States and hence unconstitutional and void. Women — not men — bear children and are the mothers of the next generation. This fact has been regarded as justifying a limitation of the rights of individual contract in the case of women which does not apply to men. Place men and women upon absolute equality with regard to legal and civil rights, withdraw this protection from women, and practically all the important social welfare and industrial legislation of the last generation will be destroyed. . . .

The purpose of this article has been merely to show the danger of hasty action and also the wide field of statute law which is involved in this problem. This latter fact is the basis of another serious objection to the Federal amendment. If we admit that absolute equality between men and women will affect statute law governing real and personal property, domestic relations, crimes and punishments, and industrial legislation governing the employment of women, must it not follow that this constitutional amendment will transfer to Federal jurisdiction an enormous field of law which has formerly been within the exclusive jurisdiction of the states. This amendment would go further toward centralizing our entire lawmaking power at Washington and breaking down state lines than any amendment or statute yet adopted. . . .

XL. THE COMMON LAW IN AMERICA [1]

BY ROSCOE POUND

PERHAPS no institution of the modern world shows such vitality and tenacity as our Anglo-American legal tradition which we call the common law. Although it is essentially a mode of judicial and juristic thinking, a mode of treating legal problems rather than a fixed body of definite rules, it succeeds everywhere in molding rules, whatever their origin, into accord with its principles and in maintaining those principles in the face of formidable attempts to overthrow or to supersede them. In the United States it survives the huge mass of legislation that is placed annually upon our statute books and gives to it form and consistency. Nor is it less effective in competition with law of foreign origin. Louisiana alone of the states carved from the Louisiana purchase preserves the French law. In Texas only a few anomalies in procedure serve to remind us that another system once prevailed in that domain. In California only the institution of community property remains to tell us that the Spanish law once obtained in that jurisdiction. Only historians know that the custom of Paris once governed in Michigan and Wisconsin. And in Louisiana not only is the criminal law wholly English, but the fundamental common-law institutions — supremacy of law, case law, and hearing of causes as a whole in open court — have imposed themselves on a French code and have made great portions of the law Anglo-American in all but name. There are many signs that the common law is imposing itself gradually in like manner upon the French law in Quebec. In everything but terminology it has all but overcome a received Roman law in Scotland. The established Roman-Dutch law in South Africa is slowly giving way before it as the judges more and more reason in a Romanized terminology after the manner of common-law lawyers. In the South African reports we find a court composed of Dutch judges, trained in the Roman-Dutch law, holding a legislative Act invalid and citing Marbury *v.* Madison — the foundation of American constitutional law — along with the modern civilians. In the Philippines and in Porto Rico there are many signs that common-law administration of a Roman code will result in a system Anglo-American in substance if Roman-Spanish in its terms.

---

[1] Reprinted by permission from Roscoe Pound, *The spirit of the common law*, Marshall Jones and Company, 1921, pages 1–7, 11–28.

Whether it is the innate excellence of our legal system or the innate cocksureness of the people that live under it, so that, even as Mr. Podsnap talked to the Frenchman as if he were a deaf child, we assume that our common-law notions are part of the legal order of nature and are unable to understand that any reasonable being can harbor legal conceptions that run counter to them, the Anglo-Saxon refuses to be ruled by any other law. Even more, he succeeds in ruling others thereby. For the strength of the common law is in its treatment of concrete controversies, as the strength of its rival, the modern Roman law, is in its logical development of abstract conceptions. Hence wherever the administration of justice is mediately or immediately in the hands of common-law judges, their habit of applying to the cause in hand the judicial experience of the past, rather than attempting to fit the cause into its exact logical pigeonhole in an abstract system, gradually undermines the competing body of law and makes for a slow but persistent invasion of the common law.[1]

Vitality and tenacity are not new qualities in our common-law tradition. It has been able to receive and to absorb the most diverse bodies of doctrine and the most divergent bodies of rules, developed outside of itself, without disturbing its essential unity. Equity, the law as to misdemeanors made in the Star Chamber, the law merchant, admiralty, the law as to probate and divorce made in the ecclesiastical courts, and the statutes of the nineteenth-century legislative reform movement in England and the United States, have been, as it were, digested and assimilated. For although we are wont to say of some of these that they made over the common law, it is quite as true that the common law made them over. In each case their alien characters have steadily disappeared and today they show few points of difference from the institutions and doctrines of pure common-law pedigree by which they are surrounded.

---

[1] At but one point has our Anglo-American legal tradition met with defeat in its competition with the rival tradition. The contest of French law, English law, and German law in the framing of the new codes for Japan was won decisively by the German law.

Moreover, the common law has passed triumphantly through more than one crisis in which it seemed that an alien system might supersede it; it has contended with more than one powerful antagonist and has come forth victor. In the twelfth century it strove for jurisdiction with the church, the strongest force of that time. In the sixteenth century, when the Roman law was sweeping over Europe and superseding the endemic law on every hand, the common law stood firm. In the seventeenth century it contended with the English crown and established its doctrine of the supremacy of law against the Stuart kings. In America, after the Revolution, it prevailed over the prejudice against all things English, which for a time threatened a reception of French law, developed its doctrine of the supremacy of law to its ultimate logical conclusion in the teeth of the strongest political influence of the time, and maintained its doctrine of precedent, involving the unpopular practice of citing English decisions, in spite of the hostility to lawyers and to systematic legal administration of justice characteristic of new communities. It is not too much to say that the common law passed through these several crises with its distinctive fundamental ideas not merely unshaken but more firmly settled.

Superficially the triumph of the common law and its establishment as a law of the world by the side of the Roman law seem secure. And yet at the very moment of triumph it is evident that a new crisis is at hand. If not actually upon trial in the United States, the common law is certainly under indictment. If we look at the three most striking examples of its present world-wide extension — its doctrine of the supremacy of law, its commercial law, and its law of torts — its doctrine of supremacy of law and consequent judicial power over unconstitutional legislation is bitterly attacked in the land of its origin and is endangering the independence and authority of the court which is the central point of the Anglo-American system; its commercial law is codifying in England and in America; and in its law of torts, the sentence of death which hangs over contributory negligence, assumption of risk, and the doctrine that liability may flow only from fault appears to many of its votaries to involve characteristic principles of the whole system. It is true the world-wide movement for socialization of law, the shifting from the abstract individualist justice of the past century to a newer ideal of justice, as yet none too clearly perceived, is putting a strain upon all law everywhere. In the United States, however, there is more than this. Here, beyond this strain which is felt wherever law obtains, the rise of executive justice, the tendency to commit everything to boards and commissions which proceed extrajudicially and are expected to be law unto themselves, the breakdown of our polity of individual initiative in the enforcement of law and substitution of administrative inspection and supervision, and the failure of the popular feeling for justice at all events which the common law postulates appear to threaten a complete change in our attitude toward legal problems.

Conscious, constructive lawmaking is a late phenomenon in legal history. In primitive society the idea of sacred law or of settled custom, all departure wherefrom is dangerous, in a later state the authority of fixed ascertainments of the traditional law, and later still the conception of an eternal and immutable natural law, of which the law of the time and place is but declaratory — all these make against conscious and deliberate creation of law by the free setting up of new premises or by the promulgation of rules which cannot be derived or made to appear derived from existing premises. Even in periods of growth, in which ideals are sought avowedly and attempt is made to shape the law thereto, and identification of these ideals with an ideal development of received legal principles is not unlikely to be the outcome. This tendency to rational working out of the jural materials in the traditional system and the demand for certainty lead jurists and judges to resort to analogy whenever they are confronted with a new problem. They fortify what would be, no doubt, a natural tendency so to proceed in any event. Hence the chiefest factor in determining the course which legal development will take with respect to any new situation or new problem is the analogy or analogies that chance to be at hand when those whose function it is to lay down the law are called upon to make an authoritative determination.

If we look narrowly at our legal tradition we shall see that it has two characteristics. On the one hand, it is characterized by an extreme individualism. A foreign observer has said that its distinguishing marks are "unlimited valuation of individual liberty and respect for individual property." It is concerned not with social righteousness but with individual rights. It tries questions of the highest social import as mere private controversies between John Doe and Richard Roe. Its respect for the individual makes procedure, civil and criminal, ultra-contentious, and preserves in the modern world the archaic theory of litigation as a fair fight, according to the canons of the manly art, with a court to see fair play and prevent interference. Moreover it is so zealous to secure fair play to the individual that often it secures very little fair play to the public. It relies on individual initiative to enforce the law and vindicate the right. It is jealous of all interference with individual freedom of action, physical, mental, or economic. In short, the isolated individual is the center of many of its most significant doctrines. On the other hand, it is characterized by another element tending in quite another direction — a tendency to affix duties and liabilities independently of the will of those bound, to look to relations rather than to legal transactions as the basis of legal consequences, and to impose both liabilities and disabilities upon those standing in certain relations as members of a class, rather than upon individuals.

What has determined these characteristics of our legal tradition? How does it come to be so thoroughly, so obstinately individualist in a time that looks more and more to social control for a solution of its problems and is bringing about a socialization of pretty much everything except the common law? How does it come that at the same time this tradition contains another element of an opposite tendency, an element that leads it to deal with men in groups or classes or relations and not as individuals? These questions demand our attention before we assume to pronounce what we may make of our traditional jural materials for the purposes of today and of tomorrow.

Seven factors of the first importance appear to have contributed to shape our American common law. These are: (1) an original substratum of Germanic legal institutions and jural ideas; (2) the feudal law; (3) Puritanism; (4) the contests between the courts and the crown in the seventeenth century; (5) eighteenth-century political ideas; (6) the conditions of pioneer or agricultural communities in America in the first half of the nineteenth century; and (7) the philosophical ideas with respect to justice, law, and the state that prevailed in the formative period in which the English common law was made over for us by American courts. All but one of these made strongly for individualism, and it is to them that we must trace the intense individualism that made the classical common-law tradition so out of accord with popular feeling in the first decade of the present century. One of them, however — namely, the feudal law — has given to our legal system a fundamental mode of thought, a mode of dealing with legal situations and with legal problems which gives wholly different results, a mode of thought which has always tempered the individualism of our law and, now that the change from a pioneer, agricultural, rural society to a settled, industrial and commercial and even predominantly urban society calls for a new order of legal ideas, has been the chief resource of the courts in the movement which has long been proceeding quietly beneath the surface in judicial decision. Let us remember that the high-water mark of individualism in American law was reached in the last quarter of the nineteenth century. Before that, signs of a reaction were appearing, and the common-law tradition proved to have in itself a principle which could be employed to carry forward that reaction without any general disturbance of the legal system.

Germanic ideas

Speaking broadly, it is true that for all but academic purposes the history of English law begins in the thirteenth century. Yet it is equally true that no arbitrary beginning may be assigned to any institution. In law especially, where until modern times conscious making of much that was new was quite unthinkable, nothing is made at once, as it were, out of whole cloth. There were few anywhere who knew any too much of Roman law when the system that grew up in the courts of the Norman kings had its beginnings, and certainly what was known of it in England was superficial enough. The materials with which the first common-law judges wrought were Germanic materials. The ideas from which and with which they laid the foundations of the Anglo-American legal system were ideas of Germanic law. So thoroughly did they lay them, so great was the advantage to the law of strong, central courts of justice administering the king's law for the whole realm as the common law thereof, that our law is today more Germanic than the law of Germany itself. The Norman conquest brought a Romance element into our speech. But it brought relatively little that was Roman into the law. When later the Roman law swept over Continental Europe, the traditional law, local, provincial, and conflicting on the Continent, was general, unified, and harmonious in England. In England, therefore, with a vigorous, central judicial system behind it and an established course of teaching in the Inns of Court which gave it the toughness of a taught tradition, the Germanic law persisted. When in the seventeenth century the labors of Coke gave it the form in which we received it in America, the common law was an English development of Germanic legal ideas. Roman law undoubtedly contributed many analogies and many conceptions which were worked into the system. But they were worked over as well as worked in and acquired the character of endemic law.

The feudal tradition

While the strict law insisted that every man should stand upon his own feet and should play the game as a man, without squealing, the principal social and legal institution of the time in which the common law was formative, the feudal relation of lord and man, regarded men in quite another way. Here the question was not what a man had undertaken or what he had done, but what he was. The lord had rights against the tenant and the tenant had rights against the lord. The tenant owed duties of service and homage or fealty to the lord, and the lord owed duties of defense and warranty to the tenant. And these rights existed and these duties were owing simply because the one was lord and the other was tenant. The rights and duties belonged to that relation. Whenever the existence of that relation put one in the class of lord or the class of tenant, the rights and duties existed as a legal consequence. The first solvent of individualism in our law and the chief factor in fashioning its system and many of its characteristic doctrines was the analogy of this feudal relation, suggesting the juristic conception of rights, duties, and liabilities arising, not from express undertaking, the terms of any transaction, voluntary wrongdoing, or culpable action, but simply and solely as incidents of a relation.

How important this conception is in the system of the common law may be perceived if we compare the Roman and the Anglo-American way of putting things with respect to some of the everyday institutions of the law. Arising as the law of the city of Rome when it was a city of patriarchal households, and as a body of rules for keeping the peace among the heads of these households, the Roman law's problem was to reconcile the conflicting activities of free men, supreme within their households but meeting and dealing with their equals without. Accordingly it held them in penalties for such injuries as they did willfully and held them in obligations to such duties or performances as they undertook in legal form. In our law, by contrast, the central idea is rather relation. Thus in agency, the civil lawyer thinks of an act, a manifestation of the will, whereby one person confers a power of representation upon another, and of a legal giving effect to the will of him who confers it. Accordingly he talks of the contract of mandate. The common-law lawyer, on the other hand, thinks of the relation of principal and agent and of powers, rights, duties, and liabilities, not as willed by the parties but as incident to and involved in the relation. He, therefore, speaks of the relation of principal and agent. So in partnership. The Romanist speaks of the contract of *societas*. He develops all his doctrines from the will of the parties. We speak instead of the partnership relation and of the powers and rights and duties which the law attaches to that relation. The Romanist speaks of family law. We speak of the law of domestic relations. The double titles of our digests, such as principal and surety, or vendor and purchaser, where the Romanist would use the one word, suretyship or sale, tell the same story.

Anglo-American law is pervaded on every hand by the idea of relation and of legal consequences flowing therefrom. In the law of torts, the existence of some special relation calling for care or involving a duty of care is often decisive of liability. For example, if A is drowning and B is sitting upon the bank with a rope and life belt at hand, unless there is some relation between A and B other than that they are both human beings, for all that the law prescribes, B may smoke his cigarette and see A drown. In the absence of a relation that calls for action, the duty to be the good Samaritan is moral only. Here and in other places where it is much less legitimate, the common-law judge tends to seek for some relation between the parties, or as he is likely to put it, some duty of the one to the other.

Again in the case of mortgagor and mortgagee, we do not ask what the parties agreed, but we apply rules, such as once a mortgage always a mortgage, which defeat intent, in order to enforce the incidents which courts of equity hold involved in the relation. In the case of sale of land, once the relation of vendor and purchaser is established, we think rather of the rights and duties involved in that relation, of the conversion of the contract right into an equitable ownership and the turning of the legal title of the vendor into a security for money, not because the parties so intended, but because the law, sometimes in the face of stipulations for a forfeiture, gives those effects to their relation. Then too we have the great category of fiduciary relations, of which trustee and beneficiary is the type.

Our public law, too, is built around this same idea of relation. Magna Carta is recognized as the foundation of Anglo-American public law. But Professor Adams has shown that, as a legal document, Magna Carta is a formulation of the duties involved in the jural relation of the king to his tenants in chief. As the Middle Ages confused sovereignty and property, it was easy enough to draw an instrument declaring the duties incident to the relation of lord and man which, when the former happened to be king, could be made later to serve as defining the duties owing by the king in the relation of king and subject. Political theory sought to explain the duties of rulers and governments by a Romanist juristic theory of contract, a theory of a contract between sovereign and subjects. It suffices to note that the latter is an alien conception in our law. After working no little mischief in our constitutional law in the nineteenth century, this conception of natural rights going back of all constitutions and merely declared thereby is giving way, and there are signs that we shall return to the true common-law conception of the rights and duties which the law imposes on or annexes to the relation of ruler and ruled.

In the nineteenth century the feudal contribution to the common law was in disfavor. Puritanism, the attitude of protecting the individual against government and society which the common-law courts had taken in the contests with the crown, the eighteenth-century theory of the natural rights of the abstract individual man, the insistence of the pioneer upon a minimum of interference with his freedom of action, and the nineteenth-century deduction of law from a metaphysical principle of individual liberty — all these combined to make jurists and lawyers think of individuals rather than of groups or relations and to make jurists think ill of anything that had the look of the archaic institution of *status*. The Romanist idea of contract became the popular juristic idea and, as Maitland puts it, contract became "the greediest of legal categories." Attempt was made to Romanize more than one department of Anglo-American law by taking for the central idea the Romanist doctrine of a legal giving effect to the individual will. This was furthered by the general acceptance in England and the United States of the political interpretation of jurisprudence and of legal history, an interpretation which found the key to social and hence to legal progress in a gradual unfolding of the idea of individual liberty in the progress of political institutions. It was furthered also by the famous generalization of Sir Henry Maine that the evolution of law is a progress from *status* to contract. Accepting this doctrine, English writers have charged that the common law is archaic because it refers legal consequences to relations rather than to contracts or to intention. But in truth the dogma of Sir Henry Maine is a generalization from Roman legal history only. It shows the course of evolution of Roman law. On the other hand it has no basis in Anglo-American legal history, and the whole course of English and American law today is belying it, unless indeed, we are progressing backward.

The Puritan influence

There are two growing periods of our common-law system — two periods in which rules and doctrines were formative, in which our authorities summed up the past for us and gave us principles for the future. These periods are (1) the classical common-law period, the end of the sixteenth and beginning of the seventeenth century, and (2) the period that some day, when the history of the common law as a law of the world comes to be written, will be regarded as no less classical than the first — the period of legal development in the United States that came to an end with the Civil War. In the one, the task was to go over the decisions and legislation of the past and make a system for the future. In the other, the task was to examine the whole body of English case law with reference to what was applicable to the facts of life in America and what was not. Obviously the spirit of these times and of the men of these times whose juristic labors gave us the mode of treating legal problems which we call the common law, could not fail to give color to the whole system. But the age of Coke was the age of the Puritan in England, and the period that ends with our Civil War was the age of the Puritan in America. We must not forget that the Puritan had his own way in America, that he was in the majority, that he had no powerful establishment to contend with, and that he made institutions to his own liking. For, again, it is not an accident that common-law principles, as they were fashioned in the age of Coke, have attained their highest and most complete logical development in America, and that in this respect we are and long have been more thoroughly a common-law country than England herself.

A fundamental proposition from which the Puritan proceeded was the doctrine of a "willing covenant of conscious faith" made by the individual. Thus he put individual conscience and individual judgment in the first place. No authority might rightfully coerce them; but everyone must assume and abide the consequences of the choice he made. Applied to church polity, it led to a régime of "consociation but not subordination." "We are not over one another," said Robinson, "but with one another." Hence even church organization was a species of contract and a legal theory, a legalism, attached even to religion. If men were to be free to act according to their conscience and to contract with others for consociation in congregations, it was a necessary consequence that the state, as a political congregation, was a matter of contract also; and liberty of contract was a further necessary deduction. The early history of New England furnishes abundant applications of the idea that covenant or compact — the consent of every individual to the formation and to the continuance of the community — was the basis of all communities, political as well as religious. The precedent of the covenant which made Abraham and the children of Israel the people of God, furnished the religious basis for the doctrine. But it was applied to civil as well as to ecclesiastical organization. One consequence was to make for the individualistic conception that all legal consequences depend upon some exertion of the will, as against the feudal conception of referring them to some relation. Contract and voluntary culpable conduct appeared to be the solving ideas for all problems, and the law was to be apportioned between the contractual and the delictual. Another consequence was to make a moral question of everything, and yet in such a way as to make it a legal question. For moral principles are of individual and relative application. In applying them we must take account of circumstances and of individuals. Hence if every question was treated as a moral question and controversies involving moral questions were to be dealt with as concrete cases to be individualized in their solution, subordination of those whose cases were decided to those who had the power of weighing the circumstances of the actual case and individualizing the principle to meet the case might result. The idea of consociation demanded that a fixed, absolute, universal rule, which the individual had contracted to abide, be resorted to; and thus the moral and the legal principle were to be applied in the same way, and that the legal way. "Nowhere," says Morley, "has Puritanism done us more harm than in this leading us to take all breadth and color and diversity and fine discrimination out of our judgments of men, reducing them to thin, narrow, and superficial pronouncements upon the letter of their morality or the precise conformity of their opinions to accepted standards of truth." The good side of all this we know well. On the side of politics, the conception of the people not as a mass but as an aggregate of individuals, the precise ascription of rights to each of these individuals, the evolution of the legal rights of Englishmen into the natural rights of man, have their immediate origin in the religious phase of the Puritan Revolution. But on the side of law, it has given us the conception of abstract liberty of contract, which has been the bane of all social legislation; the rooted objection to all power of equitable application of rules to concrete cases that has produced a decadence of equity in our state courts; the insistence upon and faith in the mere machinery of justice, which so often makes American legal procedure intolerable in the business world of today.

In the law of torts, few doctrines have been more irritating than those of assumption of risk and contributory negligence, as applied to injuries to employees. But these are eminently Puritan conceptions. The employee is a free man, guided by his own conscience and his own interpretation of Scripture. He chooses for himself. So choosing, he elects to work in a dangerous employment in which he runs a risk of being injured. He knows that others are to be employed with him; he knows that they may be negligent and that if they are, he may be injured. Very well; he is a free man, let him bear the loss. The master has done no wrong. The servant, to use Mr. Carter's language, must stand or fall by the consequences of his own conduct. It is not an accident that the classical exposition of this doctrine was penned in Massachusetts. Again, a workman, engaged constantly upon a machine, so that he comes to be a part of it and to operate mechanically himself, omits a precaution and is injured. The common law says to him: "You are a free man; you have a mind and are capable of using it; you chose freely to do a dangerous thing and were injured; you must abide the consequences." As a matter of fact, it may well be he did not and could not choose freely. Before the days of workmen's compensation, it was said that statistics showed the great majority of industrial accidents happened in the last working hour of the day, when the faculties were numbed and the operative had ceased to be the free agent which our theory contemplated. But there was no escape from the legal theory. That very condition was a risk of the employment, and was assumed by the laborer. Legislation has been changing these rules, yet courts long had a tendency to read the doctrine of contributory negligence into statutes even where the legislature had tried to get rid of it.

Equity in America shows the same influence. The Puritan has always been a consistent and thoroughgoing opponent of equity. It runs counter to all his ideas. For one thing, it helps fools who have made bad bargains, whereas he believes that fools should be allowed and required to act freely and then be held for the consequences of their folly. For another thing, it acts directly upon the person. It coerces the individual free will. It acts preventively, instead of permitting free action and imposing after the event the penalty assented to in advance. For still another, it involves discretion in its application to actual cases, and that, in the Puritan view, means superiority in the magistrate in that it allows him to judge another by a personal standard instead of by an unyielding, impersonal legal rule. Hence in large part the opposition to the Court of Chancery in England, which lasted almost to the eighteenth century, the abolition of the Court of Chancery by Barebones' Parliament, and the tracts against chancery during the Commonwealth. Hence the reluctance of Massachusetts to grant equity powers to the courts and the popular vote against equity in New Hampshire after the Revolution. Hence the general tendency in the United States to turn the liberal doctrines of equity as to discretion in granting relief into hard and fast jurisdictional rules. Pomeroy has remarked "the extreme reluctance of American courts to extend the jurisdiction of equity, even where such extension consists solely in applying familiar principles to new conditions of fact." The gradual abandonment of equity powers and legalizing of equitable doctrines which I have ventured to call a decadence of equity in America is no less remarkable. Truly the methods and doctrines of equity have not been congenial to our tribunals, and if we remember that the latter have been manned with Puritans, the reason is obvious.

Puritan jealousy of the magistrate is conspicuous in American judicial procedure. It has coöperated with the pioneer spirit and the ideas of rural communities in the first half of the nineteenth century to produce a condition in the administration of judicial business very like that to which it led in executive administration. In more than one state, codes and Practice Acts aim to regulate every act of the judge from the time he enters the court room. It is hardly too much to say that the ideal judge is conceived as a pure machine. Being a human machine and in consequence tainted with original sin, he must be allowed no scope for free action. Hard and fast rules of evidence and strict review of every detail of practice by a series of reviewing tribunals are necessary to keep him in check. In many states he may not charge the jury in any effective manner; he must rule upon and submit or reject written requests for academically phrased propositions of abstract law; he must not commit any error which might possibly prejudice a party to the cause — whether in fact there is prejudice or not. The past two decades have seen a steady movement away from this type of procedure; but in more than one western community, settled from New England, which preserves the pristine faith, it is dying hard.

XLI. THE PATH OF THE LAW[1]

By Oliver Wendell Holmes

The means of the study are a body of reports, of treatises, and of statutes, in this country and in England, extending back for six hundred years, and now increasing annually by hundreds. In these sibylline leaves are gathered the scattered prophecies of the past upon the cases in which the axe will fall. These are what properly have been called the oracles of the law. Far the most important and pretty nearly the whole meaning of every new effort of legal thought is to make these prophecies more precise, and to generalize them into a thoroughly connected system. The process is one, from a lawyer's statement of a case, eliminating as it does all the dramatic elements with which his client's story has clothed it, and retaining only the facts of legal import, up to the final analyses and abstract universals of theoretic jurisprudence. The reason why a lawyer does not mention that his client wore a white hat when he made a contract, while Mrs. Quickly would be sure to dwell upon it along with the parcel-gilt goblet and the sea-coal fire, is that he foresees that the public force will act in the same way whatever his client had upon his head. It is to make the prophecies easier to be remembered and to be understood that the teachings of the decisions of the past are put into general propositions and gathered into textbooks, or that statutes are passed in a general form. The primary rights and duties with which jurisprudence busies itself again are nothing but prophecies. One of the many evil effects of the confusion between legal and moral ideas, about which I shall have something to say in a moment, is that theory is apt to get the cart before the horse, and to consider the right or the duty as something existing apart from and independent of the consequences of its breach, to which certain sanctions are added afterward. But, as I shall try to show, a legal duty, so-called, is nothing but a prediction that if a man does or omits certain things he will be made to suffer in this or that way by judgment of the court; and so of a legal right. . . .

---

[1] Reprinted by permission from the *Harvard Law Review*, Vol. X, pages 457, 472.

Our law of torts comes from the old days of isolated, ungeneralized wrongs, assaults, slanders, and the like, where the damages might be taken to lie where they fell by legal judgment. But the torts with which our courts are kept busy today are mainly the incidents of certain well-known businesses. They are injuries to person or property by railroads, factories, and the like. The liability for them is estimated, and sooner or later goes into the price paid by the public. The public really pays the damages, and the question of liability, if pressed far enough, is really the question how far it is desirable that the public should insure the safety of those whose work it uses. . . .

At present, in very many cases, if we want to know why a rule of law has taken its particular shape, and more or less if we want to know why it exists at all, we go to tradition. We follow it into the Year Books, and perhaps beyond them to the customs of the Salian Franks, and somewhere in the past — in the German forests, in the needs of Norman kings, in the assumptions of a dominant class, in the absence of generalized ideas — we find out the practical motive for what now best is justified by the mere fact of its acceptance and that men are accustomed to it. The rational study of law is still to a large extent the study of history. History must be a part of the study, because without it we cannot know the precise scope of rules which it is our business to know. It is a part of the rational study, because it is the first step toward an enlightened scepticism, that is, toward a deliberate reconsideration of the worth of those rules. When you get the dragon out of his cave on to the plain and in the daylight, you can count his teeth and claws, and see just what is his strength. But to get him out is only the first step. The next is either to kill him or to tame him and make him a useful animal. For the rational study of the law the black-letter man may be the man of the present, but the man of the future is the man of statistics and the master of economics. It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past. . . .

XLII. LEGISLATIVE ASSEMBLIES

1. THE THREEFOLD FUNCTION OF A LEGISLATURE [1]

By Lindsay Rogers
Professor of Public Law, Columbia University

The theory of modern constitutional governments is that they have a threefold purpose: they legislate, they control expenditure, and they supervise the administration.[2] Successes and failures vary in the different parliaments as the different tasks are attempted. One assembly may make a legislative rain that is much needed and that waters without flooding, but at the same time it may also be profligate. Another assembly may be legislatively inefficient but may keep the executive on starvation rations; and still another may administer better than it legislates. There are occasionally signs that Congress (to paraphrase Gladstone's remark about the American Constitution) considers itself the most wonderful work ever achieved by the brain and purpose of man, but some European parliaments are less complacent. Both the House of Commons and the French Chamber of Deputies, to judge from their recent debates and attempted reforms, have many qualms as to the adequacy with which they represent their peoples and the efficiency with which they do their work. It is clear also that the framers of the new European constitutions, who, though more verbose and meticulous than our own founding fathers, were at least not politically illiterate, believed that no foreign parliamentary system was worth transplanting without experiments with new grafts which they deemed necessary because of imperfections and not because of the strange soil in which the borrowed institutions were to burgeon.

---

[1] Reprinted by permission from the *Political Science Quarterly*, September, 1923, Vol. XXXVIII, pages 413–414.

[2] There are doubtless other functions, but they are largely implicit in these. W. F. Willoughby, for example, distinguishes seven functions of a modern legislature in his *Government of modern states* (page 291) as follows: (1) a constituent assembly or constitutional convention, (2) a canvassing board and electoral college, (3) an organ of public opinion, (4) a board of directors for the government corporation, (5) an organ of legislation, (6) an executive council, and (7) a high court of justice. — The Editors.

All of the new constitutions attempt to make legislation less delayed and imperfect; to make executives less profligate and legislatures less complaisant in paying bills; to control executive policy, and to prevent bureaucrats from becoming autocrats either from devolution of powers upon them or because they work in unexamined security. But the problem is now much more difficult than it was a few years ago. The work of the legislature has vastly increased both in importance and in complexity. This change is so well known that it is not necessary even to adumbrate it. The legislative session is becoming longer and longer. Congress leaves its members scant time to care for their political fences. The job of representative is no longer a sinecure. He is a harassed attorney and, contrary to Burke's experience, the meanness of the business is frequently not raised by the dignity of the object. At the same time there has been something approaching a metamorphosis in the legislative assemblies themselves. As populations increase, there is a tendency for parliaments to grow larger and larger. As the suffrage is extended, members are paid, and labor parties become powerful, a different kind of representative is elected.[1] The House of Commons is no longer the best club in Europe. It is a legislative body in which there is reflected the sharp division of classes in the country. Members no longer look upon election as an honor and stay at home. There is pressure from the party organizations and constituencies for them to become active. This pressure and their own predilections make individual prominence the goal that is striven for. Competence is ignored by the electorate and is assumed by the legislators. It comes as the gentle dew, *vocis populi*.

[1] Bryce, *Modern democracies*, New York, 1921, Vol. II, Chap. LVIII.

2. LEGISLATURES IN MODERN TIMES[1]

By Harold J. Laski
University of London

The modern democratic state has no alternative to universal adult suffrage. It lies, as a state, at the disposal of each of its members to enable him to realize the best in himself; and he is entitled, as a matter of logic, to the vote that he may thereby express what his experience seems to warrant him expressing in the push of affairs. I do not argue that universal suffrage has any practical merits which render it inherently superior to other systems. But, theory apart, no tests of exclusion seem available which assist the state to the furtherance of its end. Property as a basis for the franchise merely limits the interests of the state to those of the owners of property. No technique is known whereby an educational qualification can be made synonymous with political fitness. Exclusion on the ground that a man has been in receipt of public relief is merely to stigmatize economic misfortune as a crime. Exclusion on the ground of conviction by the courts is intelligible if it is confined to a small range of offenses. But, even here, a time limit ought to operate; for obviously we do not want to exclude men like Jean Valjean from exercising their full part in civic life. Lunacy and mental defect are, of course, different matters. In those cases exclusion is built on the simple ground that attainment of a best self is, in any sense implicit with social meaning, impossible.

But an electorate must be organized to choose. A whole adult population cannot from some vast list select those whom it prefers. It is clear that a local relationship of some kind must develop between the member of the legislature and his constituents. What ought that relationship to be? Broadly, we have a choice between two systems. We may either have equal electoral districts, each returning a single member; or we may have some larger, equal unit area, each returning a number of members upon the basis of proportional representation.

What must be realized at the outset is that the member of a legislature will be returned only as a member of some party or group. The life of the democratic state is built upon the party system, and it is important at the outset to discuss the part played by party in the arrangement of affairs. Briefly, that part may be best described by saying that parties arrange the issues upon which people are to vote. It is obvious that in the confused welter of the modern state there must be some selection of problems as more urgent than others. It is necessary to select them as urgent and to present solutions of them which may be acceptable to the citizen-body. It is that task of selection the party undertakes. It acts, in Mr. Lowell's phrase, as the broker of ideas. From the mass of opinions, sentiments, beliefs, by which the electorate moves, it chooses out those it judges most likely to meet with general acceptance. It organizes persons to advocate its own view of their meaning. It states that view as the issue upon which the voter has to make up his mind. Its power enables it to put forward for election candidates who are willing to identify themselves with its view. Since its opponents will do the same, the electorate, thereby, is enabled to vote as a mass, and decision that would otherwise be chaotic assumes some coherency and direction.

---

[1] Abridged and reprinted by permission from Harold J. Laski, *A grammar of politics*, Yale University Press, 1925, pages 311–355.

Much time has been spent in the effort to explain the origin of parties. To some they are born of the natural contrast between those who cling to the old and those who embrace the new. To others, they arise from the pugnacious instinct of men. It is, however, clear that no single explanation suffices. There is a conflict of wills in society, and that conflict is decided by the decision of the intermediate mass which is not firmly convinced of the truth of any general cause. To attract its support it is necessary to advertise one's view. Parties are the natural method of effecting that end. Their form is largely dependent upon the conditions of any given time. They may group themselves about religious issues, as in the sixteenth-century France; they may group themselves about economic issues, as in the England of our own day. Naturally, they arouse the pugnacious instinct; naturally, also, there will be a tendency for the radical solution to attract the young. What, at least, is certain, is that without parties there would be no means available to us of enlisting the popular decision in such a way as to secure solutions capable of being interpreted as politically satisfactory.

To say, of course, that parties are natural is not to say that they are perfect. They suffer from all the evils of group separatism. They distort the issues that they create. They produce divisions in the electorate which very superficially represent the way in which opinion is in fact distributed. They secure, at best, an incomplete and compromising loyalty. They falsify the perspective of the issues they create. They build about persons allegiance which should go to ideas. They build upon the unconscious and they force the judgment of men into the service of their prejudices. Yet, when the last criticism of party has been made, the services they render to a democratic state are inestimable. They prevent popular vagaries from driving their way to the statute book. They are the most solid obstacle we have against the danger of Caesarism. Above all, they enable the electorate to choose between alternatives which, even though at best an artificial dichotomy, are the only satisfactory method of obtaining a government. For, on practically every issue in the modern state, the serried millions of voters cannot do more than accept or reject the solutions offered. The stage is too vast to permit of the nice shades of quantitative distinction impressing themselves upon the public mind. It has rarely the leisure, and seldom the information, to do more than indicate the general tendency of its will. It is in the process of lawmaking that the subtler adjustments must be effected. . . .

The citizen and his representative

A state divided into equal electoral districts, each returning a single member to the legislative assembly, seems the general lesson of historic experience. What ought to be the relation of the member to his constituents? It is necessary, first, to dispose of one view which is fatal to the quality of a legislature. No constituency ought to be limited in choice, as in the United States, to one of its own residents. Nothing is so certain to make for parochialism. Nothing more tempts a member to lend himself to the service of sinister interests than knowledge that defeat may mean the end of his political career. It is, moreover, a serious waste on another side. The ability at the command of a state does not distribute itself with mathematical accuracy over the electoral divisions. New York is more likely to have a number of men capable of playing a distinguished part in the Senate than Delaware or Nevada. A theory which equates defeat with practically permanent exile does not maximize the advantages of a community. It is all to the good that Mr. Gladstone, defeated in Oxford, should find refuge in South Lancashire, and Mr. Churchill move from Manchester to Dundee. Any other view underestimates so seriously the importance of experienced leadership in politics as to make it not unlikely that it is at bottom built upon the credulous superstition that, all men being more or less equal in ability, the composition of a legislature is not a very serious matter. That is a mistake so profound that not the least cause, for example, of the declining respect for the Congress of the United States is its failure to contain the natural leaders of the people. The wider the ambit of electoral choice, the better the operation of political institutions is likely to be.

It is sometimes suggested that a member of the legislative assembly must be either a delegate or a representative, must either vote as he is instructed, or use his best judgment upon the issues he is called upon to decide. That is, in fact, a wholly false antithesis. For no member can state his total views; partly because there is not the time to do so, partly because new issues are bound to arise. And upon those new issues he cannot, item by item, consult his constituents in such a fashion as to elecit from them their considered judgment. Any constituency is entitled to the fullest expression it can get of a member's general attitude. It is entitled to know his views upon the questions of the day. Any elector may reasonably ask him for an explanation of his political actions. But a member is not the servant of a party in the majority in his constituency. He is elected to do the best he can in the light of his intelligence and his conscience. Were he merely a delegate, instructed by a local caucus, he would cease to have either morals or personality. Clearly, he is not entitled to get elected as a free trader and to vote at once for a protective tariff. He is not entitled to get elected and then to decide on a year's voyage around the world. He must be decently consistent in opinion, and reasonably diligent in the performance of his duty. No constituency is justified in expecting more service than these imply, and a constituency which trusts its member will, on the whole, find that he repays it amply. . . .

Outside of party, the main sphere of the voter will lie in other directions. These are, one imagines, divisible into three main groups. There will, first, be a variety of propaganda associations connected with particular issues. They will press, as now, for the abolition of vivisection, the proper treatment of aborigines in backward countries, the simplification of spelling, for all, in fact, of the innumerable purposes a society like our own serves to create. There will, secondly, be associations of men in their aspect of producers, engineers, doctors, teachers, miners. These will concern themselves with pressure on the legislative assembly for the remedies which particularly concern the special problems of their profession. But, as I shall show later, the main theater of their activity is less likely than now to be directly political, and more likely to aim at influencing functional bodies concerned with the government of their professions. Their effort, that is to say, will be concentrated in a narrower field than now; and they will reach the legislative assembly rather through intermediate functional institutions than through a direct appeal. It is in the third group that we may, as I hope, look to the largest growth of activity. Exactly as groups of producers associate to protect their special interests, so it is possible, *mutatis mutandus*, for groups of consumers, locally and nationally, to associate for similar purposes. . . .

There are few services used by the public which are not in some degree susceptible to organization of this character. Its advantages are threefold. It supplies a means of making opinion flow through channels where it is most likely to prove of service. It enables us to have an external check upon the quality of effort provided by the service involved. It ends that hapless situation where the user of services is left to do the best he can with commodities he is practically unable to control. And, obviously, the general function of these results is an opinion which directly affects the effort of political parties and, through them, of the legislative assembly itself. The latter, indeed, is influenced in two ways. It is influenced from below as the associations make their views felt by the political parties; it is influenced from above as they secure organic connection with the executive. Nor is the latter an impossible task. Already the modern administration sets up consultative committees upon which sit the parties to the work it performs. At the Ministry of Food, during the war period in England, the Consumers' Council rendered valuable service in offering to the officials a body upon which a proposed policy could be tried before being set into general operation.[1] We need to universalize that experiment for every department of administration where it is likely to prove creative. For the more we can convince the body of citizens of their direct interest in the process of politics, the better is likely to be the result of political effort. . . .

---

[1] Cf. Beveridge, *The public service in war and peace.*

The bi-cameral system

It is almost a dogma of political science that a legislative assembly ought to consist of two chambers. Single-chamber government, it is assumed, is the apotheosis of democratic rashness. We need a brake on the wheel. We need a mechanism that enables us to delay the first, rough impulses of a body fresh from its contact with the electorate, and eager, in its inexperience, to embrace every kind of novelty. A second chamber provides exactly this safeguard; and it is regarded as noteworthy that practically every state of importance in the modern world has adopted the two-chamber system.

It should yet be noted that the two-chamber system is largely an historical accident. Bifurcation is, universally, derived from the habits of the English Constitution; but there were moments in English history when it seemed likely that we should have at least three, and possibly four, Houses of Parliament. The problem of a second chamber is best approached by considering the forms it may take. We are then in a better position to judge of the need for, and the validity of, its revision. The problem of the central legislative assembly in a federal state, is, however, a quite separate one; and I propose to discuss it apart from the general issue.

The second chamber may be elective, and chosen either at the same time as the first, or at some intermediate period; and a chamber of this kind may either have the same powers as the first, or inferior powers. Any such constitution is, I think, clearly unsatisfactory. For equal powers make eventually for deadlock, and a deadlock always involves an unsatisfactory compromise of principle. To elect the chambers simultaneously is merely to duplicate their membership; to elect them at different times is, as American experience has shown, to diminish at every point the efficiency of the executive. Where the second chamber has inferior powers, it can act only as a postponing or revising assembly; and I shall show later that these functions rest upon quite untenable assumptions.

In England, the second chamber is purely hereditary, save for a small infusion of law peers. . . . Such a method has nothing to be said for it.

Clearly, it involves setting aside permanently a small class in the state and giving to it a special control over policy. That is a denial of equal citizenship, and the basis of the state is its faculty for protecting the equal interest of members in its results. The history of the House of Lords is the history of an assembly that, quite naturally, given its constitutive principle, has set its face firmly towards the past. It has been somnolent under conservative administrations, and active under liberal. Save by making its composition numerically ludicrous, it would be impossible to find room in it for an adequate representation of the Labour Party. And even though its powers be limited by some such statute as the Parliament Act, its members cannot be made to represent any but themselves. . . .

On the general issue, this much may be said. Wherever in a state the legislature has two houses, one or other will always take the lead. One or other will therefore come to be the center of importance, and to that chamber political talent will invariably gravitate. The second chamber will, as a consequence, either live in a state of suspended animation or else, to secure some degree of attention, it will oppose measures for which it cannot hope to gain the credit. Rather than see itself impotent, it will, in Bentham's forcible phrase, "play off the whole artillery of fallacies" against the bills it sought to pass.[1] It will waste time in useless debate; and it will, thereby, keep executive officials from other and more important duties. Broadly speaking, any second chamber which agrees with the first is superfluous; and if it disagrees, it is bound to be obnoxious. For the argument that there must be delay against the rashness of a single, elected assembly mistakes, or ignores, the conditions of modern politics. Legislation is not made *ex nihilo;* it does not suddenly, as out of a clear sky, find its way to the statute book. Almost any measure that is enacted becomes law as the result of a long process of discussion and analysis. The problem of Home Rule for Ireland was debated for thirty years before its essential passage; the reform of the House of Lords has been in the public mind for a generation. The minimum wage, the abolition of the poor law, town-planning, the nationalization of the mines, all questions of this magnitude are before the public for years before parties adopt them with a view to legislation. . . .

And, in any case, the kind of check provided by a second chamber is not the most desirable form available. Necessary delay is always secured by the slowness with which a great organization like a political party is persuaded to the acceptance of a novelty. Necessary revision is best effected by the prior consultation by government of the interests touched by the legislation proposed. Most criticism in a second chamber will merely repeat the arguments already adduced in the first. What it has to say will not, except by accident, possess any special quality of *expertise.* It will tap no sources of knowledge or opinion not already in contact with the first. The true place for such an effort is in the advisory bodies by which the executive departments are surrounded. There, for instance, a Minister of the Interior can actually frame his Shops Hours Act in consultation with shopkeepers, assistants, and consumers. He can learn, far better than in debate, the probable result of his scheme. He can make the necessary adjustments in the light of their special knowledge. . . . A second chamber is no more likely than the first to be correct in its judgment of the electoral will. The necessary checks are always present in the inertia of the mass, and the desire of a government to avoid large changes which may be disastrous. Any other checks will, almost inevitably, be a premium not upon improvement but upon opposition in terms of vested interest. . . .

---

[1] *Constitutional code,* Book I, Chap. XVI.

The problem in a federal state is obviously somewhat different in character. There we have the union of areas different in size, and often enough, different also in interest, which seek in their union some special protection against the danger of being overweighted by more populous neighbors. In America and Australia the difficulty was met by equal representation in the Senate of those states. . . . Republicans in the American Senate vote in much the same way as Republicans in the House of Representatives; Liberals in the Australian Senate remember their party as much as their state. Once, in fact, a federal state comes into being, there grows up a sense of nationalism which, facilitated by the growth of communications, tends to make largely obsolete the original units of representation. So, for instance, the interests of Massachusetts are hardly distinguishable from the interests of the states of the Atlantic seaboard; the interests of Minnesota are one with the interests of the mid-northwestern block of agricultural states. The unreality of state boundaries was strikingly seen in the way in which West Virginia was carved out of its mother state. The two Dakotas might perfectly well be one; and they might equally well be linked with Nebraska and Minnesota. America and Australia, indeed, are fortunate in that their federal problems do not possess a racial aspect; that is not the case with Canada, Germany, and Switzerland. The French Canadian has genuine special interests to safeguard, the South German is different from the Prussian, the Swiss must conciliate special religious views. Yet even where such diversities are in issue, I do not see that a second chamber is of much assistance. . . .

Membership and functions

The single-chamber and magnicompetent legislative assembly seems, therefore, best to answer the needs of the modern state. Who ought to be capable of being chosen for its members? Limitation, if limitation there is to be, must be so safeguarded that it excludes in general terms, and does not weight the scales against any special class of citizens. But there is no reason why we should allow men to be chosen without regard to their experience of affairs. Absence of limitation may give us a younger Pitt, but it gives us also a large number of members who go to the legislative assembly merely for the prestige which membership confers. A rich man persuades a constituency to adopt his son as candidate because he can afford to pay the expenses of election; a retired merchant becomes a candidate to satisfy the social ambitions of an aspiring wife; the wife of a member elevated to the House of Lords succeeds him on a wave of sentiment unrelated to the problem of her fitness. It is wiser, surely, to exact a small qualification for membership in order that those seeking election may offer proof of a genuine interest in affairs. Nor is such a qualification difficult to find. If members were, before their candidature was legal, required to serve three years on a local body, they would gain that "feel" of institutions so necessary to success. We should then have some evidence of a real wish on their part to grasp the nature of public business; and we should, I think, do not a little to revivify local life by making it the necessary avenue to a career in the national assembly. We should not, thereby, exclude any serious person from a political career, and it would not be difficult to devise alternative qualifications (such as membership of the civil service) for those to whom membership of a local body had been *a priori* impossible.

It is, I think, obvious that, once elected, there should be no limit to the period of reëligibility a member of the legislative assembly should enjoy. A system which puts an end to his period of service just when he is beginning to gain experience deprives itself of not the least useful instrument he possesses. For, in a legislative assembly, few things compensate for the absence of experience. Procedure is inevitably technical; and any limit will merely end a man's term when he is at the height of his utility. It is, moreover, notorious that in assemblies like the American House of Representatives, where what may be termed the legislative turnover is enormous, much of the wastage of time, and not a little of the lack of public esteem, are due to the fact that they are, so to say, almost new assemblies at each epoch of their renewed power. Much of the strength of a chamber like the House of Commons has come from the fact that its leading figures have, over long years, been distinguished actors there. The thirty years' membership of Edmund Burke, the sixty years' service of Mr. Gladstone, the forty years of Mr. Disraeli, all meant an incomparable insight into the technique of government. Even in the case of the advent of a new party, like the British Labour Party, to power, its leaders had been familiar with the center of public affairs for twenty years. And only upon the condition of unlimited eligibility can a legislature properly fulfill its selective function. It is not easy for a man to make his mark there. The atmosphere of legislative debate is different from any other atmosphere in the world. A few outstanding persons like Bright may make an immediate reputation; but the majority will need time to express themselves upon the assembly, and through the assembly, to become known to the public outside as persons to whom the leadership of the state may be entrusted. All methods of legislation turn upon the relationship of the legislature to the executive, and the consequences which follow from that relationship. There seem three possibilities, if modern experience is at all adequate as the basis of a criterion. There may be: (1) a complete absence of any organized relation, as in the United States; (2) a fully organized relation, in which, by various means, the legislature dominates the executive, as in France; (3) a fully organized relation in which the executive directs the legislature, without being able to dominate it with any pretense at completeness.

The American system maximizes all the difficulties of lawmaking. The legislature is organized upon no coherent plan; there is no one to whom genuine initiative responsibility belongs for the passage of legislation. The application of law is entrusted to other hands, with the result that its members are largely legislating in a vacuum. The executive has no reason to expect that ample consideration for its felt needs which is essential to successful administration. It cannot control finance, with the result that members are continually able to devote expenditure to objects which are either remote from, or unrelated to, the needs of the state. Debate ceases to possess reality; for it cannot affect the life of the executive, and it does not, therefore, seriously influence the temper of administration. So rigorous a separation, moreover, means that the two organs may be dominated by different parties, so that the activities of each may be, and often have been, thwarted by the hostility of the other. The chambers, moreover, cannot with any reality exercise selective functions, for the simple reason that prominence in them is not seriously connected with the chance of high executive office. The congressional system has the capital defect of failing to dramatize political life. The result is that a deadly inertia settles over its legislature. What it does fails to illuminate the public mind. It does not produce important criticism in the newspapers, because no results of pictorial consequences follow from its working. It destroys the quality of officials, because, from their position, they are unable to influence the executive towards the adoption of a continuous and constructive policy. The legislature is continually tempted to interfere in the executive domain, in order thereby to magnify its office; and much of the latter's time is wasted in the futile effort to frustrate that criticism. The system, in short, makes for the almost complete evasion of responsibility. There is no one body of men who must bear the blame for failure. The executive can always insist that legislation is outside its sphere of competence. The legislature knows that, whatever its attitude, its tenure of office is fixed and certain. The complication which results from the rule of local residence is, of course, merely incidental to these difficulties; but it completes a failure to meet the conditions under which legislative success is possible.

The French system has few of the defects inherent in the American plan. Much, doubtless, of its inadequacy arises from the multiplicity of groups of which the Chamber of Deputies is composed. This makes immediately for uncertainty of governmental tenure. A ministry knows that, however admirable its work, the chances are enormously against its remaining in office for more than two years. The day upon which it assumes power is certain to be the day upon which its fall from power is organized. Nor is it given effective leadership over the business of the assembly. Its projects go into the commissions of the Chamber, exactly as the propositions of any private member. They emerge as fully changed; and even its financial measures are amended out of all recognition with but little regard to the coherency of their plan. The difficulties of the French system are mainly two in number. No French ministry is ever likely to have the time to carry out an ample programme; and behind it there always exists the shadow-ministry of the Commissions which derive their influence very largely from the degree to which they are able to dominate the legal ministry. The result makes the deputy a much more important person than, for instance, the average member of the House of Commons. But it makes him important only by sacrificing to him any genuine responsibility on the part of ministers, and genuine coherence in legislation. Few tests are simpler in this aspect than that of finance. Only one French minister in the half century of the Republic has attempted seriously to deal with the incidence of taxation and its results; for to do so brings into view the alternative ministries which are proliferated over the legislative assembly. One other consequence of this system deserves mention, though it is rarely brought into view. Because the ministry bears only a partial responsibility for legislation, it does not secure from the French civil service assistance either as loyal or as valuable as that upon which an English minister can count. The French civil servant knows how temporary will be his master's rule, and he is tempted, especially in political affairs, to develop a policy and connections of his own, both in the Chamber of Deputies, and in the press, in order to evade the control of the masters from whom he differs.

The British system is not free from defects, but its superiority to its alternatives is incontestable. It is built upon three great principles. It is assumed to be the business of the executive to drive a stream of tendency through affairs. It must present a programme to the legislature and stand by the acceptance of that programme; if it is rejected upon any serious point, it must either resign or appeal to the electorate. It is, secondly, the final authority in finance. No private member may either propose a financial measure or attempt the increase (he may attempt the reduction) of estimates considered adequate by the government of the day. As a consequence, thirdly, of these two principles, the initiative of the private member has a much narrower field of activity. He may, as in America and France, present his bills in unlimited numbers; but he knows beforehand that the time-table and the procedure of the assembly are under the control of the government, and that there is, broadly, no serious prospect of an important measure finding its way to the statute book unless it secures the guardianship of the government. The merits of the system are plain. In the first place, it not only provides for a coherent legislative structure, but also that those who have planned it shall, if they can secure its acceptance, put it into operation. It makes responsibility, in the second place, immediate, direct, and decisive. Everyone can see who is to be blamed and praised. Everyone knows where measures must originate. Everyone sees exactly whom to punish. And, in the third place, finance and legislation bear a definite relationship to each other. No one can hope to promote his special nostrum, or to benefit his own constituency. Logrolling, such as that which takes place in the American legislature, is obviated at the outset.

The plain virtues of this system must not, however, blind us to its demerits. It certainly gives the executive an opportunity for tyranny. It can, if it so please, make the most minor issues a question of confidence, and so proffer the alternative either of a support that is not whole-hearted, or a dissolution which will prove inconvenient. Thereby it undoubtedly tends to make debate unreal; for so much depends upon keeping disciplined the ranks of the party in power, that members are not unlikely to oppose a policy in speech and support it in the division lobby from fear of the consequences of hostility in the latter place. The initiative of the private member may, further, be so restricted by a strong executive that he is reduced almost to nullity. He can become a person only by revolting, and, by revolting, he may place his opponents in power. The legislature may easily, as a consequence, be reduced to what it was under the administration of Mr. Lloyd George, an organ of registration for decisions it is really powerless either to criticize or to alter. It seems to retain, even in that event, the ability to discharge its selective function; but I believe that careful analysis would show that, at a given point, paralysis of the legislative assembly tends to make the executive look elsewhere for its personnel. . . .

It goes without saying that the members of a legislative assembly must enjoy the utmost freedom of debate. They cannot be bound by the limitations which are referable to a court of law. For, obviously, if their statements and suggestions came within the ambit of the law of libel and slander, much would not be said in discussion that is essential to its value. Men must be able then to hint their belief in corruption even when the chain of proof is not legally ample. They must be able to describe the proceedings of, for instance, a colonial governor as tyrannical without having to face an action for damages. Whether they should be so protected outside the legislative assembly is a much more difficult matter to decide. Much of the work of a member is done in letters to the press and in public meeting. He may have views and ideas it is important for him to express, and yet be unable to find occasion for giving them vent in the legislative assembly. He ought not, clearly, to be given an open check to slander as he will; but there is some case, to take an English example, for protecting him from the consideration he is likely to receive from a London jury in a political libel action. Certainly it would be difficult for a man who felt strongly about the policy of Governor Eyre to have stigmatized it in adequate terms unless he were able to do so from a point of protected vantage in the House of Commons.

3. ROTTEN BOROUGHS IN THE UNITED STATES[1]

By John Mabry Mathews

Professor of Political Science, University of Illinois

The earliest system of representation as established in England adopted the local community as the basis or unit to which representation was accorded without regard to population. It was natural that the same plan should have been adopted in the American colonies. Even until well into the nineteenth century, cities were comparatively small, and consequently, although population was not taken into consideration primarily in fixing representation, as a matter of fact there was no very great or serious divergence from the population basis of representation.

---

[1] Reprinted by permission from the *National Municipal Review*, March, 1923.

With the shifting of population in the nineteenth century, however, and the growth of manufacturing and industrial cities, many of the rural communities in the south of England came to be what were called "rotten boroughs." The same development also took place in the United States, until by the beginning of the twentieth century the departure from the principle of popular representation had become very great and serious in some of the states. This was especially true in the case of some of the older states on the Atlantic seaboard, mainly in New England, where the town system of local government influenced the plan of representation. In the New England states, with the exception of Massachusetts, the constitutions generally provide that each town shall have at least one representative in the lower house. This general requirement is supplemented in Connecticut by the provision that no town shall have more than two representatives, and in Rhode Island by the provision that no town or city shall have more than one-fourth of the total membership of the lower house. This narrowly restricts the representation of such cities as Providence and Hartford. In Rhode Island, the under-representation of the cities is further accentuated by the provision that each town or city shall have only one senator. In some states outside of New England equal representation of counties in the senate is found. Thus, in New Jersey, Maryland, and South Carolina each county is entitled to one and only one senator. This provision produces great under-representation in New Jersey in the case of two populous counties, containing large cities. Baltimore is not affected by this provision, since it is not situated in a county, but a special provision limits it to four senators out of a total of twenty-seven, although it has about half the total population of the state. It is also limited to less than one-fourth of the representatives in the lower house. Wilmington, Delaware, is in much the same situation as Baltimore with reference to its representation in both houses. Philadelphia is also limited, though not so seriously as Baltimore, by the provision that no city or county in the state shall have more than one-sixth of the total number of senators. The constitution of New York limits the number of senators which any one county may have to one-third, and the number which any two adjoining counties may have to one-half. New York City, however, is not yet seriously affected by this provision, since it includes five counties and might, therefore, elect more than half the senators.

The county emphasized

In about one-third of the states, the constitutions provide that each county shall have at least one representative in the lower house. This provision practically operates to restrict the representation of the more populous counties and to give undue representation to the sparsely populated counties because of the general policy of definitely fixing in the constitution the exact number of members in each house. In the states having county representation there are usually a number of counties having less than the representative ratio, that is, the quotient arising from dividing the population of the state by the number of members. There are some of these states in which some counties have even less than half the ratio. The resulting over-representation of such counties can be allowed, of course, only by depriving the more populous counties of some of the representation to which, on the basis of population, they would be entitled.

Even in states which do not have county representation, the counties are not entirely ignored, but it is usually provided that representative districts shall follow county lines and that, in forming such districts, no county shall be divided except when it includes more than one district. Where county lines are thus taken into consideration, it is impracticable to form the districts so that they shall contain exactly equal population. Even if this were done so that, at any given time, each district contained exactly the same number of inhabitants, this condition would quickly change with the shifting of population, so that inequalities would arise. In order to provide for this contingency, the constitutions usually provide that periodic reapportionments shall be made. The usual interval between reapportionments is ten years, and in most states the figures of the Federal census are adopted as a basis. Where, as happens in some states, no requirement of periodic reapportionment is found, the inequalities are naturally greater. Even in some states where such a requirement is found, the constitutional provision has sometimes been ignored by the legislature, as in Illinois, resulting in a progressively increasing inequality between the different districts.

The basis of representation

Some states have adopted as a basis of representation not the total population but a restricted portion of the population, or the number of inhabitants remaining after deducting certain classes. Thus, Oregon adopts the white population as a basis; New York and North Carolina exclude aliens in determining the basis; Massachusetts and Tennessee base representation on the number of qualified or legal voters. The last-named provision would operate in most states to exclude aliens. Logically the voting population would seem to be a better basis than the total population. The theory involved in the second section of the fourteenth amendment to the Constitution of the United States is apparently that representation should be based on voting population. Such a provision would operate against the large cities as compared with the total-population basis, since, in determining representation, the floating and alien population found in considerable numbers in most large cities would be eliminated. Such an elimination would naturally increase proportionately the representation of the rural districts, but now that women have been granted full suffrage, the voting population would seem to be a fairer basis of representation than the total population. If a person is not considered fit to vote for representatives, there would seem to be no good reason why he should be counted in determining the basis of representation.

From this brief review of the provisions regarding representation found in the different states, we may pass to a consideration of the arguments for and against the different methods adopted. The historic New England system of equal representation of towns, without regard to population, however justifiable originally, is quite indefensible from the standpoint of its present operation. It is entirely out of harmony with the modern trend of democratic thought. On the other hand, the democratic theory should not be pushed to the extreme of holding that the lines of local governmental areas should be entirely disregarded and the state divided into equally represented districts containing absolutely equal blocks of population. The objections to such a plan are obvious.

It would open a wide opportunity for gerrymandering the state on a larger scale and in a more obnoxious manner than when county lines are regarded. Even under present conditions, a comparison of party votes with party representation in most states shows that the percentage of the representatives in both houses controlled by the majority party is usually much greater than the percentage of its popular vote for governor, while the percentage of representatives controlled by the minority party is usually much less than the percentage of its popular vote. The constitutional requirement that the legislature shall consider county lines in making the apportionment tends to check somewhat the evils of the gerrymander. Mere representative districts formed without regard to county lines, moreover, would be quite artificial, while the counties have to some extent a social and political unity.

It does not follow from the above considerations, however, that each county should have a representative in the legislature, especially in states where there are wide variations in the density of population in different sections of the state. Such representation could not, as a rule, be granted, even in the lower house, consistently with equal representation for all parts of the state, without making that house entirely too large for efficient work. It might be argued that counties should have representation in the state legislature on the analogy of the system of representation in county boards of supervisors and in Congress. In the county boards, it is true, each township usually has one representative, without regard to population, and, although populous townships may be allowed more than one, urban districts are usually under-represented. But the county has aptly been called the "dark continent" of American politics, and it is hardly likely, therefore, that we can derive much light on this question from that source.

It might be argued that each county in the states should have at least one representative in the lower house, and support for this position might be sought from the fact that the Constitution of the United States provides that each state shall have at least one representative in the lower house of Congress. The analogy, however, is defective. The states, of course, are not federal governments, nor do the counties occupy the same position in the states that the states do in the Union. Moreover, the operation of the provision would be different in the two cases. Such a provision in most states would give to a considerable number of counties over-representation, while in the case of the lower house of Congress, Nevada and a few other states fall below the ratio of representation, but the amount of over-representation in this case is comparatively small. This result is due to the fact that the size of the House of Representatives at Washington is greater than that of the lower house in any state and much greater than in most states. Moreover, there is no constitutional limitation upon its size such as is found in most states with regard to both houses of the legislature.

When the Federal Constitution was drawn up, state pride was strong and the confidence of the public men of that time in the political capacity of the people was comparatively low. Much was said about the danger of popular assemblies being swayed by excitement and passion. The framers, therefore, provided for representation on the basis of population in only one house, and not fully on that basis even in that house. Since the Constitution was adopted, there has been a decrease in the feeling of state pride and a simultaneous growth in the general confidence in the political capacity of the people. Hence it seems probable that, if the Convention of 1787 were meeting now in our present advanced state of thought upon these matters, it would accord a larger recognition to the principle of population as the basis of representation. On the other hand, it is no doubt true that, if the members of such a convention as that of 1787, whether meeting at that time or now, had reason to believe that any one state would ever have sufficient population to control the House of Representatives, they would have introduced restrictions so as to prevent it.

The city's case

In favor of representation in both houses in the state legislature on substantially a population basis, it may be argued that the legislature should not have the power of levying taxes and passing other laws which the people must obey unless the people have been accorded equal representation in the body which makes the laws. If large cities are not accorded the representation in the legislature to which their population as compared with that of the rural districts would entitle them, many residents of the cities may hold in disrespect a law in the making of which they consider themselves not to have been properly represented. Equal representation upon a population basis may therefore be conducive to a more effective enforcement of the law, since it tends to bring the provisions of the law more in accordance with public opinion, upon which its enforcement ultimately depends. If the code of morals of the cities and that of the rural districts differ so that no general law will meet the approval of state-wide public opinion, there is no good reason why either side should attempt to cram its code down the throat of the other by general law, but local autonomy in such matters should be allowed.

Again, it may be argued that there is no difference in principle between allowing every voter equal weight in choosing state executive officers and allowing him equal weight in choosing representatives in the state legislature. Through his veto power and his positive influence in legislation, the governor is as important a factor in the work of the legislature as a considerable group of that body. Yet it is not suggested that the cities should have less proportional weight than the rural districts in choosing the governor.

The country's case

On the other hand, one may sympathize with the feeling of the rural districts that they do not want to be dominated by the city political machine. But there is also a machine in the rural districts, which one hears less about because it meets with less opposition. Most new movements and so-called radical ideas which point the way of progress and endanger the hold of the majority political party emanate from the cities, while the rural districts are inclined to be more conservative. If the rural districts are much over-represented, the need for carrying the elections in those districts becomes greater if the political party is to control the legislature. The efforts of the party organization may therefore be concentrated upon the rural districts, with the consequent greater danger of corruption. On the other hand, it is probably true that in the rural communities, where everybody knows everybody else, the voters can usually form a more intelligent estimate of the qualifications of the candidates, and the machine may therefore be practically compelled to put up better candidates for the legislature in the rural districts than in the cities.

This is not a question upon which either side can afford to insist to the last ditch upon its extreme claims and refuse to compromise. The definite trend of modern democratic thought requires that the population basis of representation should be conformed to as nearly as practicable, consistently with adequate recognition of the locality principle of representation. No county should have separate representation if its population is less than half the representative ratio, but the county should be combined with others to form a representative district. On the other hand, no one county should be allowed to dominate the legislature of the state in both branches.

A compromise of these opposing interests which readily suggests itself is that the population basis of representation should be adopted in one house and the community principle in the other, so that the urban districts shall control one and the rural districts the other. This solution seems attractive on its face, but objections may be urged to it. Such a device may lead to undue friction between the two houses and possible deadlock upon the legislative matters that vitally affect the interests of either section of the state. Moreover, it may lead to a division of party responsibility for the work of legislation, where one party has a majority in the city and the other in the rural districts.

Home rule a way out

If this form of compromise be rejected as inadvisable, and if it be accepted as inevitable that complete adoption of the population principle of representation is impossible where it would lead to domination of the state by one city or county, there remain two principal avenues of escape whereby the city may emancipate itself from rural control. There are the initiative and referendum and constitutional home rule. The former avenue, if adopted, would enable the people of the cities to have proportionate weight according to population in direct legislation, without regard to the degree of their under-representation in the regular legislative body. This is probably one reason why the introduction of the initiative and referendum is opposed by the rural districts. Without regard to the contest between city and country, however, the initiative and referendum may be objected to on general grounds. The more promising avenue of escape for the cities, therefore, seems to be constitutional home rule of a broad and liberal nature. If the city is not allowed to govern itself through the legislature, then it must be allowed to govern itself directly.

4. WHERE STATESMEN COME FROM[1]

By Lindsay Rogers

It is an ideal of popular government that the legislature should be a mirror of the nation. This is roughly sought after by electoral districts and party divisions. Geography and party are essential, but they are also cloaks which conceal other factors in the make-up of a legislative body. These factors are important but are not much discussed. Consideration of them is frequently limited to the tacit assumption that there should be some diversification of interest. A legislature, that is to say, composed entirely of farmers or millionaires is not desired. But the proportion of diversification is a crucial element in the quality of a legislature as a representative and lawmaking body. An intelligence test or a division into Left and Right does not tell the whole story.

There are some matters (for example, a surtax on incomes) where a sectional or party label does not determine the economic "principles" which will be appealed to. A lawyer is more likely than a farmer to believe that the sovereignty of the Supreme Court (or of one member of the Supreme Court) should not be challenged. A holder of railroad securities is somewhat inclined to favor non-confiscatory freight rates, and a Senator who describes himself as "America's largest producer of wool and mutton" may be more anxious than a coal miner for a tariff on wool or for agricultural credits.

The occupational basis of legislative bodies, in other words, is as significant as, although much more complex than, the geographical or party basis. The background, education, environment, and worldly goods of members of Parliament and Congress are of as much importance as the fact that the legislators are Liberals, Conservatives, Republicans, or Democrats. Groupings come according to economic interest as well as the demands of party and constituency; they are determined by imponderable elements which do not readily lend themselves to measurement. It is possible, however, to indicate the present occupational basis of representation in Parliament and Congress, and some striking differences are shown.

---

[1] Reprinted by permission from the *New Republic*, July 30, 1924.

Mr. Keynes described the House of Commons elected in December, 1918, as containing "a lot of hard-faced men who look as if they had done very well out of the war." Labor made some gains in the 1922 election. Not counting these members and the placemen (who must resign from corporate posts when they enter a ministry), there were 255 (out of 400) members of Mr. Bonar Law's House of Commons who were landowners or company directors; the capital they represented was estimated at two billion pounds. The election in December, 1923, made further changes, and the major groups of Conservative and Liberal members of the present House of Commons have been classified by Mr. Harold J. Laski in a recent issue of the *Manchester Guardian:* [1]

---

[1] With these figures it is of interest to compare the following analysis of the membership of the newly elected House of Commons presented by Mr. Laski in *Time and Tide*, June 7, 1929:

Occupation	Conservative	Liberal	Labour	Total
Landowners or rentiers....	99	8	19	126
Finance and industry	77	22	28	127
Law	30	18	8	56
Army and navy...........	13	..	...	13
Journalists	3	6	25	34
Teachers................	4	..	20	24
Clergy..................	1	1	4	6
Civil servants...........	1	..	2	3
Trade unionists	...	..	150	150
Doctors.................	3	1	9	13
Others	29	3	31	63
Total	260	59	296	615

It is hardly necessary to call attention to the great increase that has taken place in the number of labor-union officials. Though this table does not reveal it, there are upwards of a dozen secretaries or leaders of other types of organizations. Also it is worth bearing in mind that many who are variously classified above have really made politics their career for so long that it is hard to say that they have any other occupation. Only 132 of the members are entirely new to Parliament and only 212 have definite connection with the constituencies they are to represent. Obviously England is still determined that Parliament shall continue a national institution. — The Editors.

Conservative and Liberal Members, House of Commons, 1924

Finance	19	Textiles	21	Teachers	5
Coal	8	Brewing	5	Merchants	54
Lawyers	85	Rentiers	68	Engineering and steel	24
Army	20	Doctors	3	Journalists	16
Navy	8	Land	20	Transport	17

Differences in the make-up of the two parties are considerable but not striking. One-fourth of the members of the Conservative party hold hereditary titles or are intimately related to members of the House of Lords. Of the rentiers listed in the table, fifty-eight are Conservatives; the army and navy seem to continue their traditional Conservative bias. Only eleven members of the Liberal party are closely associated with the aristocracy, and, as Mr. Laski says, "Liberalism therefore attracts pre-eminently the middle classes of the community." In the House of Lords, there are 272 company directors (a peerage has a distinct value in a stock prospectus). There are 242 peers who represent landowning interests, and, according to an estimate made last year by the Labour Research Department, 227 peers own 7,362,009 acres of land. Sixty-nine insurance companies have 106 peers as their representatives; forty-two banks have sixty-six members; six peers are newspaper owners, and twelve are brewers, hardly a sufficient number to justify reference to the upper chamber as the "Beerage." Capital and industry are thus strongly intrenched in Parliament, and the Labour Party offers a striking contrast. Its membership is made up as follows:

Labour Party Members, House of Commons, 1924

Mines	46	Agriculture	2	Rentiers	7
Engineering and shipbuilding	10	Clergy	2	Journalists	14
General labor	7	Farmers	1	Lawyers	5
Transport	10	Accountants	1	Teachers	12
Railways	6	Printing	5	Bankers	1
Textiles	4	Public service	3	Army	1
Metal workers	4	Coöperative	3	Doctors	3
Other trade unions	31	Merchants	11	Boot and shoe	2

The trade unions are represented by 136 members (an increase of fifty from the last Parliament), but the party also contains quite a mixture of intellectuals and professional men. Seven are rentiers, but only one is directly connected with the aristocracy. The miners, who number one-fifth of the members of the Trade-Union Congress, return one-third of the total trade-union membership in the House of Commons. This, naturally, is due to the great concentration of miners in certain areas. Indeed, it may be said that the British Labor Party has an occupational basis which is slightly broader than its geographical basis. Hardly any Labor members are returned from the southern and south midland counties, from Central Wales, or from the Scottish Highlands. Our own solid South has several parallels in England.

It is thus clear that capital and labor are sharply represented in Parliament, but instead of clear-cut divisions, the American Congress shows only nuances. Practically the only source of information as to who Congressmen are is the *Congressional directory*, for which Representatives and Senators write their own sketches. These sometimes make up in humor for what they lack in information. They enumerate achievements in college (membership in the Y. M. C. A. or the football team), and some answer political charges that have been made back home. One Representative even announces that he was "illegally and unjustly declared discharged" from the army during the war; but on the directorships that they hold and the income taxes that they pay, Congressmen are rather vague. Furthermore, the biographies are sometimes misleading; for their authors, in the desire to impress, report several occupations. But the following analysis of the present House of Representatives is sufficiently accurate to warrant comparison with the House of Commons:

United States House of Representatives, 1924

Lawyers	262	Publishers	1	Doctors	6
Bankers	9	Teachers	13	Dentists	3
Army	1	Journalists	13	Manufacturers	9
Farmers	10	Ministers	1	Real estate	3
Trade-union officials	2	Actors	1	Engineers	1
Merchants	44				

Nearly sixty members of the House fail to report their occupations, and there are a number of cases, as I have said, where men are both bankers and farmers, and lawyers and insurance agents. Six Senators fail to report their occupations, but the remainder may be grouped as follows:

United States Senate, 1924

Lawyers	58	Farmers	8	Business men	6
Well-drillers	1	Dentists	1	Stock-breeders	2
Bankers	3	Journalists	3	Teachers	3
Advertising	1	Doctors	3	Engineers	1

Congress is thus dominated by lawyers, and modest lawyers at that, for the ones with lucrative corporate connections rarely seek membership in the national legislature. Substantial majorities in both branches belong to the profession which, as Burke said, quickens and invigorates the understanding, but which "is not apt, except in persons happily born, to open and liberalize the mind in the same proportion." De Tocqueville thought that our lawyers were "the most powerful existing security against the excesses of democracy." The question may be raised as to whether they are not a security against the progress of democracy, for, to most congressional lawyers, modern legal education is a dark continent, unknown, but believed to contain dangers. The principal problems of modern government are now economic, and any special competence that lawyers have may be purchased in the form of legislative drafting assistance.

It is the middle class, the bourgeoisie, rather than the aristocracy, the plutocracy, or the proletariat which is represented in Congress. There are of course some rich and some poor men, but there is no sharp division of classes as in Parliament.

Nor have we many (or any?) of the so-called intellectuals in Congress. These differences are due to the conservatism of both major parties; the absence of any real division between them; the selection of candidates by irresponsible, extra-governmental party organizations; the choice of the Cabinet outside of Congress, so that ability goes unrewarded; the interest of business in influence rather than direct representation, and the size of the country, which requires a man serving in Congress to neglect his business and live in Washington.

Finally, and this is probably the most important consideration — American legislators represent the districts in which they reside. Mr. Laski points out that only 173 (of 600) members of the House of Commons are so connected, and he adds: "If the forty-one miners elected for their own districts are removed as being a special case, four-fifths of the House is national rather than local in character." At the election last December, 416 local candidates were rejected, including 221 who had had local government experience in the divisions which they contested. Mr. Laski agrees with Lord Bryce "that the absence of the local rule as a qualification for Parliament is at once its chief safeguard of quality and its main rampart against corrupt parochialism."

Congress, in Burke's phrase, is "a confused and scuffling bustle of local agency," but this "deputantism," as it is called in France, while it may make easier the formation of blocs to protect economic interests that are largely sectional, helps to avoid for us the line-up between labor and capital which is evident in Parliament and to keep the antagonists out of the congressional arena. That we thus avoid an open clash of economic interests is a mixed blessing, but that Congress has a too narrow, and too predominantly middle-class occupational basis is unquestionable. A broader basis would result in greater congressional competence.

5. AGE AND SERVICE OF CONGRESSMEN, 1790–1924[1]

By Stuart A. Rice

Professor of Sociology, Wharton School, University of Pennsylvania

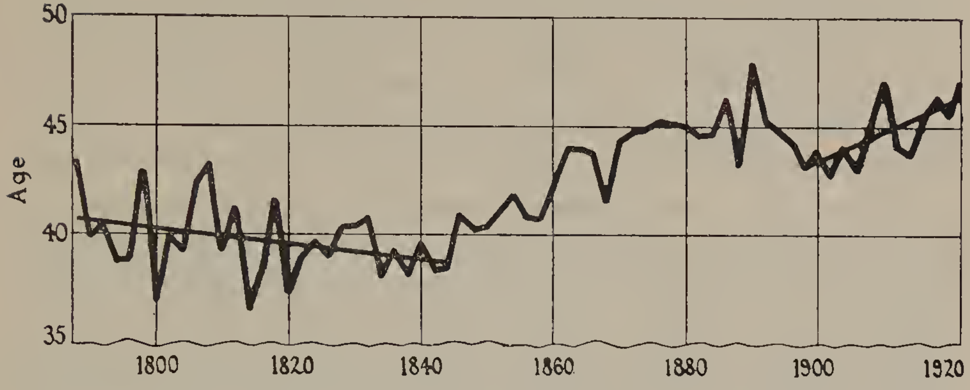
A number of years ago Professor Alvan A. Tenney in his graduate seminar at Columbia University suggested that increasing age was probably a factor making for comparative conservatism of attitudes. If, then, some measures of relative age levels in different legislative bodies were secured, they might be found to correlate with the types of legislation, whether radical or conservative in tendency, that these bodies produced. With this idea in my mind, it was subsequently noted that the leaders in the new Free State government of Ireland were predominantly young men, a fact which, in view of their revolutionary attitudes, seemed to support the hypothesis. . . .

It is apparent, from the accompanying charts, that down to the Civil War period there were trends in the direction of electing younger

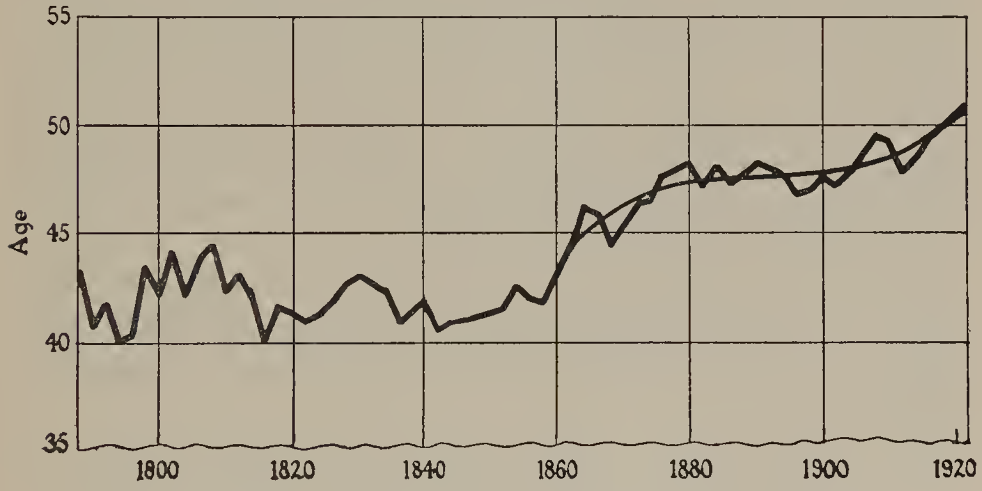
---

[1] Reprinted by permission from Stuart A. Rice, *Quantitative methods in politics,* Alfred A. Knopf, 1924, pages 294–302.

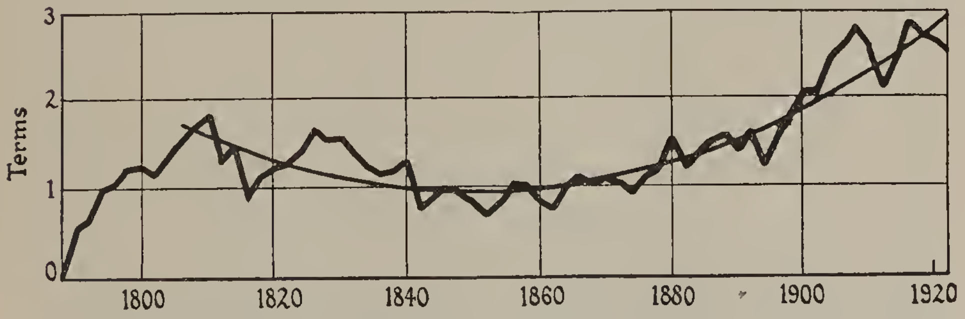
AGE AND SERVICE OF CONGRESSMEN, 1790–1924



Median Age of First-Term Representatives, 1st to 68th Congresses



Median Age of All Representatives, 1st to 68th Congresses



Average Experience (Terms of Previous Service), 10th to 68th Congresses men to Congress and retaining members there for shorter periods of time. From the Civil War period onward the age of first-term members has increased, reaching especially high averages with the men elected in 1890, 1910, and 1922. With this change came about a tendency to leave congressmen in office for longer periods of service. As would be expected, there has resulted a greatly increased average age of all members. As to the causes of these changes, the lengthening expectation of life is perhaps an important factor, but one for which no statistical allowance has been made. The opinion may be hazarded that another factor has been a gradual departure from the Jacksonian type of democratic sentiment which prevailed during the time when the curves were trending downward. As to the results of these changes, no statistical statement can be made. The hypothesis which inspired the study has received no discredit, however, and on the contrary may seem to have obtained some support. Not only increasing average age, but increasing average tenure of office as well would seem, *a priori*, to be influences making for conservatism in legislation. Whether or not conservatism has actually shown corresponding growth is still a matter of opinion concerning attitudes which are vaguely defined.

The presence of cycles about the several lines of trend is as marked as the trends themselves. What meaning they may have, I shall not venture to guess. . . . It is with regret that I am unable to say more concerning these data.

XLIII. GROUPS AND GROUP CONFLICTS

1. THE NATURE OF GROUP CONFLICTS[1]

By James Madison

As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for preëminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have in turn divided mankind into parties, inflamed them with natural animosity, and rendered them much more disposed to vex and oppress each other than to coöperate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.

---

[1] From the *Federalist papers*, No. X, 1787. These are a collection of essays written by Alexander Hamilton, John Jay, and James Madison urging the ratification of the Constitution of the United States.

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and not improbably corrupt his integrity. With equal, nay, with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the others. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes, and probably by neither with a sole regard to justice and the public good. The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number, is a shilling saved to their own pockets.

It is in vain to say that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole.

The inference to which we are brought is, that the *causes* of faction cannot be removed, and that relief is only to be sought in the means of controlling its *effects*.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add that it is the great desideratum by which this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind.

2. FROM THE OLD LOBBY TO THE NEW[1]

By E. Pendleton Herring
Department of Government, Harvard University

"If the dome does not look like the top of an old-fashioned nursing bottle," thundered Senator Shipstead not long ago, "I do not know what it looks like!"

As a matter of fact, Washington is full of people suffering from just such an optical delusion. They view the Capitol hungrily as the source of nutriment for their own interests. If they are not working to get something for themselves, they are busily struggling to prevent an enemy organization from obtaining legislative favors. All of these organizations operate in Washington in matters dealing with government and legislation through that institution known as the "lobby." A congressional committee has defined this term "lobby" as having "the broad meaning of a person or body of persons seeking to influence Congress in any way whatsoever."[1] There is hardly a national association in the capital that under this definition of the term does not at one time or another function as a lobby. Most of these associations have much wider interests than those connected with the lobby alone. In many cases the work of lobbying is carried on by a special department of the organization that is designated for that particular task.

---

[1] Abridged and reprinted by permission from E. Pendleton Herring, *Group representation before Congress*, Institute for Government Research, 1929, pages 30–60.

Despite this fact, it is a difficult matter to meet a lobbyist face to face. One may encounter legislative agents, executive secretaries, special counsels, research secretaries, and national chairmen quite frequently, but very seldom is an acknowledged lobbyist to be seen. "The word at one period carried with it a certain idea of acts sinister and corrupt, and the first impression now made upon the mind of the average man when this word is used in connection with legislative bodies is probably in line with this conception."[2]

Naturally enough, those seeking to influence legislation at present do not relish a title that suggests such an evil reputation. A change has taken place in the methods of the lobby within the past decade or so, and today the lobbyist functions quite differently from his predecessor. A gradual evolution has changed the lobby in many essential aspects.

Methods of old lobby

Perhaps the fullest and certainly one of the most colorful accounts of the old lobby is given by Ben Perley Poore, from whose *Reminiscences* the following quotation is taken:

> The lobby is a quiet but efficient part of congressional machinery. Scores of bills are considered and passed during every session, each involving thousands

---

[1] Report of House Committee on charges against members of the House and lobby activities, 63d Cong., House Report 113, page 15, December 9, 1913.

[2] "In Queen Elizabeth's time a Speaker of the House of Commons, Sir John Trevor, was bribed by rich merchants to exert his influence in Parliament in behalf of certain favors to the municipality of London." (Lalor, *Encyclopaedia of political science*, Vol. II, page 778.) See Paul S. Reinsch, *American legislatures and legislative methods*, pages 228–274; Hudson C. Tanner, *The lobby and public men from Thurlow Weed's time;* and Theodore Roosevelt, *American ideals*, pages 63–66.

> of dollars, and those having them in charge do not feel like turning a deaf ear to anyone who can promise support. An occasional investigation reveals the work of ex-Congressmen, who hover about the Capitol like birds of prey, and of correspondents so scantily paid by the journals with which they are connected that they are forced to prostitute their pens. But the most adroit lobbyists belong to the gentler sex. Some of them are the widows of officers of the army and navy, others the daughters of Congressmen of a past generation, and others have drifted from home localities, where they have found themselves the subjects of scandalous comments. They are retained with instructions to exert their influence with designated Congressmen. Sometimes the Congressmen are induced to vote aye on a certain measure, sometimes to vote no; and it often occurs that where the lobbyists cannot make an impression on them, one way or the other, they will endeavor to keep them away from the House when the roll is called.
>
> To enable them to do their work well, they have pleasant parlors, with works of art and bric-a-brac donated by admirers. Every evening they receive, and in the winter their blazing wood fires are often surrounded by a distinguished circle. Some treat favored guests to a game of euchre, and as midnight approaches there is always an adjournment to the dining room, where a choice supper is served. A cold game pie, broiled oysters, charmingly mixed salad, and one or two light dishes generally constitute the repast, with iced champagne or Burgundy at blood heat. Who can blame a Congressman for leaving the bad cooking of his hotel or boarding house, with the absence of all home comforts, to walk into the parlor web which the cunning spider-lobbyist weaves for him.

This type of lobbyist was supplemented by representatives of private interests. Instead of relying upon the lobbyist entirely, the great national financial groups found that results could be obtained by recruiting directly to their service members of the House or Senate. There were Congressmen who represented steel, coal, meat, timber, or the railroads. For example, in 1894 the newspapers recognized this situation by generally referring to the Senators who had betrayed their party on the sugar schedule as the "Senators from Havemeyer," the sugar "baron." Here was a system very effective for carrying out the wishes of the "interests," but very difficult to trace. Senators were usually selected to be the servants of the "trusts." This abuse has largely ceased to exist. Today Senators cannot be pointed out as the definite spokesmen of some great corporation.

It must not be supposed that private corporations no longer have their representatives in the capital, for they do. At the present time these lobbyists no longer parade so boldly as they once did. Now they operate quietly in carrying on the traditions of the past. Some few still have their hotel suites,[1] their champagne parties, and their one or more subservient Congressmen. However, the days of their glory are past. There are yet a few lobbyists of the old school about the capital, although their influence is entirely negligible. Moreover, there is another survival of the good old days that still plays a part in the work of the newer lobby in Washington. This is known as the "social lobby." It has had a long and merry past, and is even now a factor to be reckoned with in Washington.[2]

The new lobby

The Washington offices of the associations, societies, leagues, institutes, boards, and federations organized on a nation-wide scale today form the great lobbies in the capital. By comparison the representatives of corporations, the patronage brokers, the "wirepullers," the crowd of old-style lobbyists pale into insignificance. The men with the power are these spokesmen of organized groups. Congressmen lend an attentive ear to their words. Often they lend a helping hand to their activities. These group representatives work in the open, they have nothing to hide, they know what they want, and they know how to get it. They work with precision and efficiency. The "old, sly, furtive, pussyfoot agents of special-privilege trusts" have been pushed to one side. The great organized groups, which now in such large numbers maintain headquarters in the capital, constitute the lobby of today. They are the "third house of Congress," the assistant rulers, the "invisible government."

It is agreed among all those who watch the legislative processes at Washington that the old-fashioned methods of bringing pressure to bear on Congress are now generally discarded by the effective lobbies.

The rise of organized groups

The reforms in Congress and the more enlightened attitude on the part of the general public toward political affairs serve to explain in some measure the decline of the old methods of influencing legislation. But they do not explain why organized groups should approach Congress at the present time. There appears to be arising a new spirit of socialization among men and a tendency to combine in groups for their common interest. However, the fact that these groups, as groups, are taking a very active interest in government does not necessarily follow from the mere fact of their organization into units. That the national government has greatly extended its activities serves to establish many contacts with the citizen, but it does not determine the method whereby the citizens shall meet these contacts. The political party in the past has been the recognized agency through which the voter acted to have the government adopt one policy or reject another. It is still the chief agency, but it is not the organization that initiates programmes or creates policies. It is the mere broker that accepts the planks of organized interests that promise to insure the most votes. The party puts up the candidates and measures that seem most likely to win elections. A democracy must have means of expressing the opinions and beliefs held by the citizens. Nonpartisan associations of voters are meeting this need. Perhaps the chief explanation for the rise of these organized groups of voters, with an alert interest in legislation and politics, is found in the decline of the political party as a leader in opinion.[1]

---

[1] William Allen White, *Politics: the citizen's business*, page 13.

[2] "Up against the social lobby," *Literary Digest*, February 20, 1926, Vol. LXXXVIII, pages 54–56; and "Women replace men as lobbyists," *Current Opinion*, February, 1925, Vol. LXXVIII, page 208.

The American political party

The dilemma in which the political parties find themselves is to a large extent inherent within the political system in this country. They could not help themselves if they tried. The party has definitely established itself as a unifying agency in government, but it is rapidly losing its position as a formulator of policies and a leader of political thought. Developments have taken place which make it impossible for the party to advocate and carry through a distinctive and coherent programme. The explanation may be found partially in the structure of the government and to an even greater extent in the changes that have occurred in fields not directly connected with politics. These structural limitations may be considered first. The American political party is obstructed at the very source by two limitations that are the base rock in the political system in this country. Parties in England, France, and the other modern democracies are not checked from active political leadership as is the party in the United States. Two fundamental limitations debar the American party from the degree of leadership that the party is able to attain in other countries. One great boulder damming the stream is the Constitution of the United States, and the other is the doctrine of the separation of powers.

---

[1] For discussion on the breakdown of political parties and the rise of organized groups, see Stuart A. Rice, *Farmers and workers in American politics*, Chap. I, "The realignment of forces in American politics."

Of late years one of the most important and arresting developments in politics has been the forces by which the Constitution of the country has been amended. Constitutional changes crystallize the outstanding movements of a period. They are of the stuff that inspires principles and political issues. But what part does the party play? A very minor rôle indeed.

Only under the most extraordinary circumstances does a party successfully sponsor as a partisan measure an amendment to the Constitution. The thirteenth, fourteenth, and fifteenth amendments to the Constitution, forced through by the Republican Party under the abnormal postwar conditions, are really the only examples of amendments to the Constitution for which a party can be held responsible. The woman suffrage amendment, the direct senatorial election amendment and the prohibition amendment, together with the proposed child-labor amendment, cannot in any sense be considered partisan measures. Party leaders want and must get quick results. Constitutional amendments are not worth the effort and the long sustained advocacy required on the part of their adherents. The majority required to pass them is too great for the party to muster under ordinary circumstances. It is, doubtless, just as well that the changes in the fundamental law of the land are not made the subject of partisan legislation. Nevertheless, it is interesting to note that the political party plays a negligible part in Constitution amending.

The other fundamental limitation discouraging the party in carrying out a definite programme is the concept of the separation of powers upon which the government is founded. The Executive in theory carries out the laws; Congress legislates. There is no direct control by the Executive over the course of legislation. The President cannot put through any programme of legislation unless a majority in Congress is in agreement with him. Even then there is not the same direct responsible and personal leadership that is to be had under a parliamentary government. There is no guarantee that the executive branch will command a majority in the legislative bodies. Should the President and the majority in Congress be of different parties, questions may remain undecided and the wheels of government arrested. These inherent difficulties in our system of government are too well known to require more than a passing reference, and that merely to indicate the obstacles that lie in the way of a party's putting through a definite legislative programme.

When considering the rôle of the party in the United States, it is well to keep in mind these limitations to its activities. They do narrow the field, but they do not entirely explain the lack of difference and the absence of effective leadership in the parties.

A partial explanation is found in developments entirely beyond the control of the party which have restricted the questions with which they may deal. For example, the growth of cities may be taken. This movement has resulted in a cleavage between the people of the rural and urban districts that goes much deeper than the superficial difference in the mode of living. It deeply affects their thought and their ideas of government. Some writers have seen in it one of the most fundamental rifts in the social structure. The parties, however, ignore the questions it brings forward. At present the Democratic Party is facing the problem of reconciling the city members, as typified by Governor Smith and his New York following, and the country members of the solid South. The two branches have nothing in common except the party designation. This division in the party is a great source of weakness; it necessitates compromise; it prevents the party from taking an unequivocal position; it stultifies leadership. Nevertheless, it is the price a party must pay if it would attempt to represent a vertical cross section of the voters and to stand on a broad national basis. The growth of cities is an economic development, but it has political consequences. It not only affects the Democratic Party, but it arouses grave differences between the Republican bankers and business men of the East with their protective tariff on the one hand, and on the other the Republican farmers of the Middle West, who are demanding relief from the government. Cleavages appear that cut straight across party lines, and the party must compromise in order not to offend its heterogeneous membership.

Growth of associations during the World War

Many of the national associations of the present day, however, are not primarily concerned with legislation nor with policies. Their basis is economic rather than political. These groups received a great stimulus at the time of the World War. The government at Washington, in recruiting the national resources in that time of emergency, found it difficult to deal with separate industries and individual business concerns scattered all over the country. The Council of National Defense, the War Industries Board, the War Trade Board, the Food Administration, and other units asked officially that trade associations be formed in many industries in order to simplify the relations with the government. The American Federation of Labor assumed a new importance, as did the farmers' organizations. The representatives of organized groups proved of value in a national crisis. In mobilizing the full strength of the country these special-interest units gave the government cohesive and responsible organizations with which to deal.

This trend toward organization among lines of common interest, whether vocational, industrial, moral, or social, was too fundamental to cease with the war. The great value of associations was more evident. The power to be gained through organization and coöperation was realized. Since the war they have perfected their technique and improved their organization, tested their power, and come to some understanding of their potentialities. Present conditions foster and encourage the organized group. The chief factors are the improved means of communication that make possible organization on a large scale, the development of the art of propaganda that brings in the converts, and the recognition generally that through coöperation and intelligently directed selfishness the group may most benefit. The mechanical means make organization possible; the temper of the times makes it actual. The evolution of the political party creates a distinct need for such agencies in the formulation of public opinion. National associations are an important part of our government.

The Washington offices of the organized groups of the country function as the embassies of their membership before the national government. Some actually call themselves "ambassadors." Theoretically they are but the spokesmen of their members. Actually they may not be as fully representative as they claim. At all events they are powerful and highly organized. They are responsible for much that becomes law. They have much to say and little to hide. The old secret lobby is gone. Skulduggery has not departed from politics. No one is so rash as to state that corruption in government is gone. Teapot Dome still looms too large. Nevertheless, the present-day lobby that works intelligently and effectively has found methods for attaining its ends that are open and aboveboard. The legislative agent is quite willing to explain his activities to the curious.

How the new lobby operates

These representatives of special interests are recruited from the ranks of those they represent, from the legal profession, from the staffs of newspapers and journals, from colleges and laboratories, and from the halls of Congress itself. The last, the recruits from "The Hill," are often drawn from that class familiarly known as "lame ducks": the Congressmen who fail of reëlection but return to the capital, despite this incapacity, to serve out the yet remaining months of their term and strive to pick up what political crumbs they may. They form a very important element. A considerable number of ex-Senators and ex-members of the House, when their term of office has expired and they find themselves out of a job, turn to the many private interests with their organized agencies in Washington and find in them a ready market for their talent. The arrangement is a satisfactory one to the Congressman and to the group employing him as well. In the case of the Congressman (unless he proves the exception to the general rule) the mere thought of leaving the capital, once he has become imbued with the "Washington atmosphere," is very distasteful. When reëlection fails, something must be done to continue the congenial life he has been leading. Governmental posts solve the problem for many, but there are not enough jobs of this sort to go around. It is here that the organized interests and the "lame duck" get together. Ex-Congressmen by courtesy retain their privileges of the floor of the House of Senate, and this, together with their experience in legislative matters gained from actual participation, and their contacts, friendships, and intimate knowledge of the members of the two houses, makes a formidable armory of knowledge and experience of great value to the groups desiring an able spokesman. Men who have held important positions in the governmental service have a prestige and an entrée in Washington that cannot be otherwise acquired. There are those, to be sure, who refuse to capitalize their public position in this manner, but there are also many who have no such delicate scruples. It raises a rather subtle ethical issue.[1]

Lawyer-lobbyists

The number of lawyers in the capital is truly astonishing. The ratio of attorneys to the rest of the population is higher here than in any other city in the country.[2] Two thousand and seventy-two lawyers and law firms are listed in the Washington telephone directory. There are hundreds who never have occasion to go near a court. They act simply and solely as the spokesmen for the group retaining them. They are very able attorneys and their acts are quite within the legal proprieties.[3] Organized interests have issues at stake and it is only proper that they employ the best counsel to state their side of the case. As the relationship of the lawyer to the organized interest is that of the attorney to his client, it is a matter of considerable difficulty to estimate just how many different groups are represented in the capital. The lawyer does not advertise the fact and will only admit it when questioned directly. There is no particular secret about it, and yet it cannot be a matter of general knowledge because no record is kept of this representation. Further complications arise from the fact that one attorney may act for several groups with allied interests.[4]

---

[1] Frank R. Kent, in the *Baltimore Sun* of May 20, 1927.

[2] Richard Boekel, *Regulation of congressional lobbies*, Editorial Research Reports, page 16.

[3] Testimony of witness: "I consider it the privilege of a lawyer, and sometimes his high duty, to acquaint a member of Congress, otherwise unacquainted with it, with the subject upon which he is expected to cast his vote." — House Hearings, Select Committee on Lobby Activities, 63d Cong., 1st Sess., page 1053.

[4] "There are times when one lobbyist will represent not one but six or eight powerful groups." — D. Wilhelm, "Washington soviets," *Forum*, November, 1925, Vol. LXXIV, pages 743–751.

Newspaper men and former government employees

Beside the former Congressmen and the lawyers there must also be considered the newspaper men who join the ranks of the lobby in considerable numbers. One of the chief functions of the national association is to attract public support and approval through a skillful use of all manner of publicity. It is to this end that the groups in Washington find the services of a newspaper man of great value.[1] Just as the "lame duck" understands legislative procedure, so the journalist knows the methods of spreading propaganda to the best advantage. He has the contacts with the newspapers and he knows how to prepare his releases in such a way that they often are accepted by the editors and Washington correspondents as legitimate news items. It is a far cry from these able "directors of public relations" to the old-style press agents, but both are of the same stock. In addition to these experts in publicity, many of the great organized groups hire experts in other fields. Attached to many of these associations are experts on taxation, the tariff, labor conditions, and similar matters requiring a certain technical knowledge. Economists, statisticians, chemists, and research workers are found necessary.[2]

There is one other type of expert that is found of very great value, to wit: the technologists and the skilled government employees who have received thorough training as civil servants in the Federal departments. It has occurred time and again that such men have been persuaded to leave the employ of the government and join private organizations at a very much higher salary. In many ways they are useful to the national associations. They can sell to advantage the knowledge and experience gained on trade commissions, in scientific bureaus, and in Federal departments. In most cases there can be no impropriety in their accepting positions with these organized groups. There have been instances, however, when the representatives of large social interests have been lobbying long and hard to obtain valuable concessions from the government, and when vast resources of oil, timber, or water power have been the stakes. It is then that the question may well be raised as to the propriety of these organized groups offering civil servants higher salaries and urging them to resign from the government in order to take advantage of the knowledge such a government employee may have concerning the concessions under consideration.

---

[1] A newspaper man is not permitted to be a member of either the Senate or House press galleries if he is interested in any lobbying activities. Washington correspondents before admission to membership in these galleries must sign this statement: "I am not engaged in the prosecution of any claim pending before the Congress or any department; I am not employed in any legislative or executive department of the government, or by any foreign government or any representative thereof; I am not employed, directly or indirectly, by any stock exchange, board of trade, or other organization or member thereof, or brokerage house or broker engaged in the buying and selling of any security or commodity, or by any person or corporation having legislation before the Congress; and I will not become engaged in any of these capacities while retaining membership in the galleries."

[2] Jay Hayden, "Watchful lobbies and lobbyists that camp in Washington," *Literary Digest*, October 30, 1920, Vol. LXVII, pages 58–60.

How these associations work

Having considered the operators, what, now, of the machine they operate? In the first place, it is a vast machine and a complex one. It is highly organized; it extends its power far and wide; but it runs smoothly, powerfully, relentlessly, and is only to be stopped by another machine more powerful than itself. Of course, each organized group has its own apparatus, but there are general similarities of operation about them all that make it possible to outline the scope and the method of their work. Therefore, the typical national association may be considered, first, in its relation to the public; secondly, in its relation to the government; thirdly, in its relation to the political party; and lastly, in its relationship to the other national associations in Washington that are likewise representative of certain groups.

The organized group in its relation to the general public functions as an active dispenser of propaganda. By propaganda is meant the means of persuasion employed in a conscious effort to influence the thought and action of one's fellow. Propaganda[1] may be good or bad, moral or immoral; it is not necessarily a term of opprobrium. It is used here in no invidious sense. It is, however, the strongest weapon in the arsenal of the lobby. It is the instrument that helps mold public opinion in the form the interested party desires. The one who can mold the popular feeling upon an issue is the one who can force the consequence to his liking. It is not strange, then, that the bureau of "information" is one of the most active of the departments in most of the national associations.

---

[1] Carlton Hayes, *Essays in nationalism*, page 61.

The propaganda work of a national association has two ends in view in relation to the public. In the first place, the effort is made to form a general opinion favorable to the group, and then the attempt is made to marshal this sentiment and direct its influence upon the administrative officers or the members of a legislature from whom favorable action is desired. Senator Charles S. Thomas has summed up the situation very well. He states:

> Since in the United States, public opinion, and not Congress or the President, is king, the man who controls public opinion will easily control the nation itself. And in recent years the forces of privilege have aimed at doing precisely this thing. The men who seek special favors of Congress rely almost exclusively upon the manipulation of public sentiment. They do not bribe, or give free passes, or pay election expenses; they attempt to make the legislators think that the thing they want is the thing that the public wants. They do not go for the Congressman except only occasionally; they send his constituents after him. The favor-seeking classes apparently remain quiescent themselves; the real persuasion is done by newspapers, letter-writers, publicity agents, petition-signers, public lecturers, magazines, and telegram-senders. The new lobby has seized upon everything that plays a part in forming what is apparently enlightened and independent public sentiment.[1]

3. THE ARTICULATION OF GROUP OPINION

By Karl N. Llewellyn

A given opinion of a given public gains vastly in effectiveness when it finds a spokesman. Through a spokesman opinion takes definite form, consolidates among the group, spreads into wider groupings. Articulation is at once a process of opinion formation and of opinion spread. It is also a process of enforcement; thus are the more tangible of social pressures brought to bear with some certainty and force on the offender. You have to know to be sure you should act. And it is clear that this function of articulation, especially public articulation addressed at the culprit, is sometimes not performed at all. The neighborhood sullenly resents Blank's treatment of his children, or his staggering journeys home from the blind pig. Blank may even cease to be employed. But the same neighborhood will in part negate its own pressure by bountifully providing Mrs. Blank with washing. At the other extreme is the official spokesman — the Roman censor — whose duty is to voice offense and reproof. In between lie grievance committees, proctors, the press, the pulpit, publicists, and Comstocks. What is clear is that coherence and direction of opinion on any point in any public are enhanced to the extent that a machinery for articulation exists, is centralized, and has recognized standing, which, for an organized group within society, may even be the official standing of a specialist. Consider, after dunning letters have failed of their objective, the effectiveness of the bawler-out who decries his victim before the latter's office mates and his employer — a specialist under centralized control, tapping a pressure most immediately effective and loosing it direct upon the prey.

---

[1] Charles S. Thomas, "My adventures with the sugar lobby," *World's Work*, January, 1916, Vol. XXVII, pages 244–245.

Indeed, in this question of the specific impact of opinion upon the specific person or group sought to be controlled lies the key to half of the process and problem of social control. Diffuse opinion is weak equally in its own coherence and in its effect, equally in getting clear to the public concerned what is wanted, and in satisfying the want. Articulation gives strength in both aspects, but especially in the former. The problem of impact reaches farther. It was suggested above that specification of the particular person sought to be affected is vital to study. Obvious divergences in problem and means arise as between, e.g., a member of an organization who is subject to suspension, or exclusion, or, if the benefits of membership are greatly to be desired, to fine as a condition of continued membership; and on the other hand, say, a public official sought to be influenced by persons outside his constituency. The range of procedures used by various outside publics in approaching the governor of Massachusetts in the recent Sacco-Vanzetti matter is instructive.

4. PRESSURE GROUPS AND GOVERNMENT[1]

By A. Gordon Dewey
Interim Professor of Government, Amherst College

Within each state there exists a piece of machinery called the "government," its distinguishing characteristic being authority to coerce by "legal" means, itself defining the term "legal." Upon this governmental machine there continually operate numerous more or less highly organized interest groups, seeking to gain control of it in order to utilize it for their own purposes, in order to impose their own wishes under color of "the law." The resultant of these pressures we call the "process of government"; and although the structure and mode of operation of the machinery (and along with it the political ideas and habits of the people) differ widely from country to country, yet this underlying process is the same the world over. A study of the visible organs of government in their operation will not carry us far towards an understanding of those basic problems usually grouped under the heading "popular control," such as public opinion, political issues, and party alignments. On the other hand, although progressive extensions of the suffrage, but widening the area of active participation in politics, have immeasurably increased the relative importance as well as the complexity and difficulty of analyzing the process of government, this field might pass as virgin. But first of all, what is the meaning of the term "politics"?

With the activities of the New York State Medical Society, or the Actors' Equity Association, the political scientist is not ordinarily concerned; he would speak of them as professional, not political associations; indeed, he might be quite unaware of their existence. When, however, the chiropractors seek legislation favorable to their interests, and the physicians decide to oppose them,[2] or the actors meet with Mr. Gompers and officials of allied organizations with a view to curbing the influx of competing English artists,[3] the organization may be said to be engaging in "politics." And so on up the scale — from the efforts of the East Harlem Storekeepers' Association, Inc., to compel New York City by peremptory mandamus to remove pushcart peddlers from Park Avenue between 111th and 116th Streets,[1] to slavery, secession, free silver, world democracy, and Darwinism — no matter how the question may be obfuscated, whenever it tends to involve a utilization of the machinery of government, then it becomes a "political issue," those concerned with it are involved in "political activity."

---

[1] Reprinted by permission from *Political Science Quarterly*, December, 1923.

[2] *The New York Times*, February 9 and 13, 1922, March 19 and May 7, 1923.

[3] *Ibid.*, February 2, 1922.

It is both unnecessary and impracticable here to attempt a classification of the organizations whose activities the student of politics is called upon to note. Their name is legion.[2] Their objects may be specific or embrace whatever is conducive to the interests of the group. In area of operations they range from those national or even international in scope to others purely local. In a great city like New York there are probably scores of associations established primarily in the interests of areas of but a few blocks. In point of time they vary from those great continuing organizations which have played a major rôle in shaping their country's history, to committees formed for promoting some specific object or *ad hoc* coalitions of existing forces.

---

[1] *The New York Times*, April 2, 1922.

[2] The following interesting enumeration of organizations active in Canadian political life appeared in the official organ of the western Canadian grain growers (*Grain Growers' Guide*, 1913, page 822):

"DON'TS FOR GRAIN GROWERS

"Don't agitate for lower tariff duties, because you will offend the Canadian Manufacturers' Association.

"Don't agitate for lower freight rates, because you will offend our three great railway companies.

"Don't agitate for cheaper money, because you will offend the Bankers' Association.

"Don't complain about the high price of lumber, because you will offend the Lumbermen's Association.

"Don't complain about the high rate of interest you pay on mortgages, because you will offend the loan and mortgage companies.

"Don't advocate coöperative stores, because you will offend the Retail Merchants' Association.

"Don't advocate taxing land values, because you will offend the real estate associations.

"Don't advocate honest politics, because you will offend both the Grit and the Tory Parties.

"Don't organize your own elevator companies, nor ship grain to your own grain company, because you will offend the elevator combine.

"Don't talk temperance, because that will offend the Wholesale Liquor Dealers' Association.

"Every other calling in Canada is organized except the farmers, and that is the reason the farmers get the worst of it in every deal, and always will get the worst of it until they are organized on business lines to protect themselves at all times."

In endeavoring to influence governmental action, interests are versatile and ubiquitous. In an effort to secure a satisfactory formulation of public policy, they participate in the filling of elective offices, they act for and against legislative proposals, they suggest plans, more or less in detail, or even frame and secure the introduction of complete measures. In the case of the Gibbs-McWhinney bill providing for the licensing of all brokers and salesmen of real estate, "the bill was drafted by the New York State Association of Real Estate Boards, which is composed of twenty-three real estate boards in up-state cities, in collaboration with the Brooklyn Real Estate Board and the Real Estate Board of New York." It was unsuccessfully introduced in 1920; was amended and passed the Legislature in 1921, but vetoed; repassed and signed April 15, 1922. Since then the Real Estate Board has bestirred itself to assist in the enforcement.[1]

On the administrative side, we find them registering complaints of nonfeasance or malfeasance, either directly to the government or indirectly to the press or other interests;[2] they may invoke one part of the government against another, as through a tax-payer's suit.[3] They may offer gratuitous advice on law enforcement or coöperate with the government at the latter's request.[4] They may furnish volunteer personnel with the same object [1] or even act in the place of the government whether requested or not. When they do not actually supply part of the official personnel from their own number, they at least exert themselves in the selection of appointive officers.

---

[1] See *New York Times* for March 6, 1921, April 23 and October 1, 1922.

[2] *Ibid.*, October 1, 1920 — Resolution of Executive Committee of American Legion demands dismissal of Assistant Secretary of Labor Post. *Ibid.*, December 25, 1922 — Allied Civic Coal Committee of Brooklyn announces it will call on State Fuel Administrator to demand resignation of Fuel Administrator for Brooklyn.

[3] *Ibid.*, October 1, 1921 — New York Board of Elections mandamused *re* awarding contracts for voting machines for forthcoming elections. "The writ was obtained by Benjamin M. Day of the Jamestown Automatic Registering Machine Corporation . . . who is also President of the New York Young Republican Club."

[4] *Ibid.*, October 8, 1922 — "A suggestion has been made to the Department of Commerce by the National Automobile Chamber of Commerce to adopt the loose leaf manual form in the publication of Commerce reports." *Ibid.*, September 15, 1922 — Zone Chief Appleby designates an agent to confer with the President of the Jewish Theological Seminary "in an effort to secure the coöperation of the Seminary in the campaign to stop the alleged abuses [bootlegging of alleged sacramental wines]. Dr. Adler came here especially for the conference."

These pressures are focused on the government and on other interests. They are turned on the party leaders, on candidates prior to election, on the local representative in the legislature, on the members of the committee charged with the measure, on the leaders in the chambers, on the executive, on officials empowered to carry out the desired action, or on those capable of influencing them.

5. HOW THE POWER LOBBY WORKED [2]

From the minutes of the executive committee of National Electric Light Association, January 20, 1927:

> Resolved, by the executive committee of the Public Relations section of the National Electric Light Association, that it is the sense of this committee that every effort should be made to discourage the advocacy of government subsidy, ownership, or operation of electric service, and be it further
>
> Resolved, That we hereby express our unanimous conviction that the advocacy of government subsidy or construction of facilities for rural electric service is unsound, uneconomic, unnecessarily discouraging to the efficient efforts now being made to extend rural service, and as tending to disrupt those public relations so essential to progress.

From the minutes of February 3, 1926:

> Commenting on the general headquarters activities pertaining to the section, Managing Director Aylesworth stated that over 9,000,000 sets of so-called Barton pamphlets to customers, 13 in a set, and 900,000 sets of pamphlets to security holders, 4 in a set, had been distributed by member

---

[1] See *New York Times* for October 22, 1921 — "A campaign against unnecessary noises has been begun. . . . Ten members of the Fifth Avenue Association have volunteered their services without compensation as sanitary reserves to undertake the enforcement of the law, ordinances, and regulations covering noise offenders. Each member of this committee is a duly constituted officer sworn in as a member of the Sanitary Committee of the Department of Health. . . . The Sanitary Reserves have been provided with summons books containing coupons."

[2] From exhibits introduced in connection with the testimony of Paul S. Clapp at the hearings on Utility Corporations held by the Federal Trade Commission in April and May, 1928. 70th Cong., 1st Sess., Sen. Doc. 92, Pt. 3, pages 201–203.

companies, this being the largest distribution of a direct message to the public ever made. Approximately 10,000 copies of "Niagara in Politics," by Professor Mavor, have been sold and distributed. Mr. Aylesworth also stated that through the Public Policy committee contributions have been made to Harvard University and Northwestern University. The fund for Harvard University of $30,000 a year for three years will be used for an investigation of regulation and also for the establishment of a case system dealing with that subject, and, it is hoped, a report which will deal with the fundamentals of regulation. The fund for Northwestern University will be devoted to a consideration of government ownership of every character. The other amount raised by the Public Policy committee, Mr. Aylesworth stated, was the sum of $30,000 for the General Federation of Women's Clubs upon application of Mrs. John D. Sherman, president of the General Federation, for part of the expense of a national home survey, both urban and suburban. Mr. Aylesworth called attention to the weekly letter, "Public Opinion," issued from headquarters and forwarded to all member company executives, this letter containing reproductions of articles, addresses, and editorials appearing in the press of the country, and dealing with questions affecting the electric light and power industry. Mr. Aylesworth stated that headquarters would be glad to send copies of this weekly letter to editors of newspapers in communities served by member companies, provided the request is made direct by the editor of the newspaper. Mr. Aylesworth also spoke of a service just being started in the form of special letters containing a digest of legislative material of interest to the electric light and power industry.

Mr. George F. Oxley, director of public information, reported as follows on the activities of the department:

"Headquarters has received many good reports from the distribution of the Barton pamphlets.

"About a year ago a book entitled 'Prosperity through Power Development' was published by a special committee. That book comprised excerpts from the World Power Conference papers. More than 6,000 have been placed in libraries and distributed to prominent people.

"'Niagara in Politics' has about 10,000 circulation up to date. The Association has sold approximately 3,000 directly from headquarters. At the direction of the Public Policy committee 5,243 were placed in college and public libraries and 808 were sent to that many leading newspapers for editorial and newspaper review notices. A total of 9,500 have been ordered by the Association and a quantity still remains on hand and copies are available."

"Political Ownership and the Electric Light and Power Industry" is being revised. Mr. Oxley stated that he had hoped to have the book ready before now, but that some of the sources of information have been rather slow in checking up the lists. The book will show an increase of between 175 and 250 additional communities which have abandoned municipal ownership, either in the form of generating plant and distribution, or generating plant or distribution system, in the last year since the previous book was published. At the direction of the Public Relations executive committee, Mr. Oxley said, the same distribution will be made as was made a year ago.

From the minutes of January 19, 1927:

Mr. Sloan, chairman of the Relations with Financial Institutions committee, reported that the model public utility law has been modified and will be introduced in the present session of the New York Legislature.

He called attention to the fact that a Mr. Heywood, a mechanical engineer and well-known writer, is willing to undertake a book on public relations. It is Mr. Heywood's idea not to make this a book of rules. He would make a study of the situation and be willing to devote an entire year to it. The book would be undertaken with the coöperation of the N. E. L. A. if the Association decided that such a book should be written. Mr. Sloan recommended that a committee be appointed to discuss the matter with Mr. Heywood and see if in their opinion he has the proper qualifications.

Chairman Jones stated that in his opinion there is a demand for a book on public relations, also that the committee ought to consider an educational course on this subject, and suggested that this was a matter that might be taken up after hearing the report of Mr. Niesz.

Mr. Jackson, chairman of the Coöperation with Educational Institutions committee, reported that a meeting of his committee had been held in Chicago January 4 and 5, with good attendance. He stated that the meeting was called primarily to get in touch with representatives of geographic divisions throughout the country. Before the meeting was held, a questionnaire had been sent out in an effort to find out exactly what work was being carried on throughout the country, and the result of the questionnaires showed that no coördinated work was being done in the various divisions, and that, in fact, some had not appointed committees. The questionnaire did show, however, that some very efficient work is being carried on by the utilities themselves with educational institutions in some of the larger cities. A subcommittee was appointed to map out a definite programme to be followed, so far as possible, throughout the country, and Mr. Jackson read the report of the subcommittee. Mr. Jackson stated that the report of the subcommittee had been unanimously adopted and that, as chairman of the committee, he was asked to report this action to the public relations section executive committee and recommend that it be approved.

Organization

It is recommended that a contact representative be appointed by the utilities for coöperation with each educational institution carrying on definite instruction in the public utility field. One such representative might act with all such institutions which are conveniently accessible to him. These contact representatives should report to geographical or state members of this committee, the exact lines of organization depending upon the extent of the activities in any area.

Ralph Heilman, Chairman
C. O. Ruggles
John F. Gilchrist
Hugh M. Blain
L. R. Nash
R. R. Herrmann
T. D. Crocker

Mr. Jones said that the committee was unalterably opposed to public ownership in any form, and that any encouragement of state ownership of rural lines is not in the interest of good public relations or in the interest of sound economics in the business.

6. MEMBERSHIP OF TYPICAL NATIONAL ASSOCIATIONS

Compiled by E. P. Herring

It will be seen that the totals range from millions in some cases to less than a score in others. In the absence of accurate qualitative tests these figures may prove suggestive, but this fact should be emphasized, namely, that the mere size of the membership is by no means a sure criterion as to the relative strength of the group. The conscious group solidarity and the unanimity of purpose with which the members support the programme of their association is of far greater significance in estimating the power of any organization than is a mere census. For example, forty manufacturers of syrup representing the united purpose of all those interested in the manufacturing phase of this product will have more influence when syrup is affected than will a much larger group attempting to speak for a million members on a matter that does not concern these members so closely as syrup affects the makers of this particular commodity. Moreover, the group solidarity becomes stronger and forces greater recognition when the interests of a particular group are threatened. A method of determining the degree of this group cohesiveness is yet to be

---

[1] Reprinted by permission from *Group representation before Congress*, pages 284–287.

discovered. In compiling this list the attempt has been made to select certain types of associations that are representative of their kind as well as to show the disparity of the membership totals that are to be found among the wide variety of associations in Washington. As some of these associations are not composed of individuals as members, but of local branches, unions, or societies, it is not always possible to indicate the number of individuals connected with the national organization. In such cases the number of constituent bodies is given. The list is offered as in the nature of a composite picture wherein data on a few typical associations are given as illustrative of many other organizations.

TRADE ASSOCIATIONS [1]

American Bottlers of Carbonated Beverages	2,000
American Cotton Manufacturers' Association	850
American Iron and Steel Institute	2,200
American Petroleum Institute	4,000
American Railway Association	573
Chamber of Commerce of the United States of America	21,238
National Coal Association	1,000
National Industrial Council	318
National Fertilizer Association	219
National Merchant Marine Association	150
National Sand and Gravel Association	200
National Syrup and Molasses Association	35
Railroad Owners' Association	25,000

AGRICULTURAL ORGANIZATIONS

American Agricultural Association	75
American Farm Bureau Federation	
County farm bureaus	1,810
Community units	15,000
Farm families	521,068
American Farm Congress	30,000
American Sugar Cane League of the United States of America	2,700
Apple Growers' Association	1,148
Burley Tobacco Growers' Coöperative Association	109,113
Dark Tobacco Growers' Coöperative Association	70,000
Milk Producers' Association	2,000

---

[1] In the case of trade associations the membership is composed of business firms rather than of individuals.

National Grange of the Patrons of Husbandry	
Local granges	8,000
Members	800,000
National Livestock Producers' Association	280,000

LABOR ORGANIZATIONS

American Federation of Labor	
Individual members	2,896,063
Local unions	29,128
City central bodies	792
Local department councils	753
National and international unions	107
State federations	49
Local trade and Federal labor unions	373
Amalgamated Association of Street and Electric Railway Employees	101,300
Amalgamated Clothing Workers of America	125,000
Brotherhood of Locomotive Engineers	88,000
Brotherhood of Painters, Decorators, and Paper Hangers of America	125,000
Brotherhood of Railroad Trainmen	188,000
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees	125,000
United National Association of Post Office Clerks	43,000

PROFESSIONAL ASSOCIATIONS

American Association of Engineers	6,000
American Association of Industrial Physicians and Surgeons	275
American Association of Petroleum Geologists	2,000
American Bankers' Association	21,000
American Bar Association	27,000
American Chemical Society	15,119
American Economic Association	3,507
American Engineering Council	40,000
American Institute of Architects	3,250
American Medical Association	96,443

WOMEN'S ORGANIZATIONS

American Home Economics Association	88,005
American Nurses' Association	70,000
Daughters of the American Revolution, National Society	
Members-at-large	4,957
Chapter membership	162,486

General Federation of Women's Clubs	
Federated clubs	14,000
International Association of Police Women	600
National League of American Pen Women	2,000
National League of Women Voters	
Local leagues in over two-thirds of congressional districts. Does not have list of individual members.	
National Woman's Party	10,000
Women's International League	50,000

Reform Organizations

American Civil Liberties Union	5,000
Anti-Saloon League of America	
"Organization in each state and the federation of the state organizations forms the national."	
Association against the Prohibition Amendment	
"Thousands of men and women." Membership not definitely recorded.	
International Reform Federation	12,000
National Child Labor Committee	11,000
National Temperance Bureau	
Federation of four temperance organizations, two of which have individual membership, but "the number in each is a matter of interest only to the membership and is not reported to the public."	

Nationalists and Internationalists

American Legion	700,000
Disabled American Veterans of the World War	24,869
Disabled Emergency Officers of the World War	3,025
English-speaking Union of the United States	17,202
League of Nations Nonpartisan Association	35,000
Military Order of the World War	8,000
National Council for Prevention of War	
Member organizations	39
Sentinels of the Republic	1,000
United Spanish War Veterans	103,276
United States Flag Association	50,000
United States Air Force Association	25,000

7. LABOR'S VOICE IS HEARD

EXHIBIT ILLUSTRATIVE OF THE WAY IN WHICH THE AMERICAN FEDERATION OF LABOR CONDUCTS ITS SO-CALLED NONPARTISAN POLITICAL CAMPAIGN[1]

AMERICAN FEDERATION OF LABOR

NATIONAL NONPARTISAN POLITICAL CAMPAIGN COMMITTEE

HEADQUARTERS:

A. F. OF L. BUILDING
WASHINGTON, D.C.

Executive Committee:
William Green
Frank Morrison
James O'Connell
Thomas A. Rickert
Matthew Woll
Martin F. Ryan

Stand faithfully by our friends and elect them. Oppose our enemies and defeat them; whether they be candidates for President, for Congress, or other offices; whether executive, legislative or judicial.

March 30, 1928.

TO ALL ORGANIZED LABOR IN ILLINOIS:

Dear Sirs and Brothers:

Many requests have been received for the records of the Congressmen at Large from Illinois which show that great interest is being taken in choosing candidates for that office.

For your information I am enclosing the legislative records on measures of interest to labor of Representatives Henry R. Rathbone and Richard Yates.

With best wishes, I am

Yours fraternally,

FRANK MORRISON

Secretary,
American Federation of Labor.

---

[1] It will be observed from the letter of transmittal that the final decision, like the actual campaigning, is left to local labor sympathizers. The lists of votes serve to indicate the types of measures in Congress in which organized labor is especially interested. The legislative records are reproduced on page 140.

ILLINOIS CONGRESSMAN AT LARGE

REPRESENTATIVE RICHARD YATES, REPUBLICAN,

RESIDENCE: SPRINGFIELD.

LEGISLATIVE RECORD ON MEASURES OF INTEREST TO LABOR.

66th Congress		*Attitude toward Labor*
July 1, 1919 —	Appropriation for U. S. Employment Bureau, Department of Labor	Not voting
July 22, 1919 —	Final passage Nolan $3.00 minimum wage bill	Favorable
Sept. 20, 1919 —	Motion by Fess to strike out anti-trust provisions favoring labor in first deficiency bill	Unfavorable
Oct. 17, 1919 —	Vocational rehabilitation of cripples in industry	Favorable
Mar. 23, 1920 —	Naval appropriation bill — amendment by Hull of Iowa prohibiting use of appropriation to conduct stop-watch and bonus systems	Favorable
Apr. 30, 1920 —	Retirement bill — objectionable motion excluding members of organized labor from its benefits	Not voting
Apr. 30, 1920 —	Final passage of civil service retirement bill	Not voting
67th Congress		
June 15, 1921 —	Nolan amendment to Seamen's bill limiting hours of oilers, watertenders and firemen to eight out of twenty-four instead of twelve	Not voting
May 2, 1922 —	Extension of 3 per cent immigration Acts of May 19, 1921, to June 30, 1924. Acceptance of conference report	Favorable
Jan. 22, 1923 —	Passage of workmen's compensation bill for District of Columbia	Not voting
68th Congress		
Apr. 12, 1924 —	Passage of immigration restriction bill	Favorable
Apr. 26, 1924 —	Passage of child labor amendment to Constitution of United States	Favorable
May 19, 1924 —	Motion to concur in obnoxious recommendation of Committee of Whole to strike out enacting clause in Howell-Barkley railroad bill	Unfavorable
June 6, 1924 —	Acceptance of conference report on postal employees' wage increase bill with Cable corrupt practices amendment	Favorable
69th Congress		
Mar. 1, 1926 —	Passage of bill abolishing R.R. Labor Board and providing for collective bargaining	Favorable

Favorable to labor	8
Paired favorable to labor	0
Unfavorable to labor	2
Paired unfavorable to labor	0
Not voting	5
Answered present	0
TOTAL	15

XLIV. THE COURTS AS LAWMAKERS

1. THE JUDGE AS LAWMAKER[1]

BY B. N. CARDOZO

Chief Judge of the New York State Court of Appeals

WHAT is it that I do when I decide a case? To what sources of information do I appeal for guidance? In what proportions do I permit them to contribute to the result? In what proportions ought they to contribute? If a precedent is applicable, when do I refuse to follow it? If no precedent is applicable, how do I reach the rule that will make a precedent for the future? If I am seeking logical consistency, the symmetry of the legal structure, how far shall I seek it? At what point shall the quest be halted by some discrepant custom, by some consideration of the social welfare, by my own or the common standards of justice and morals? Into that strange compound which is brewed daily in the caldron of the courts, all these ingredients enter in varying proportions. I am not concerned to inquire whether judges ought to be allowed to brew such a compound at all. I take judge-made law as one of the existing realities of life. There, before us, is the brew. Not a judge on the bench but has had a hand in the making. The elements have not come together by chance. Some principle, however unavowed and inarticulate and subconscious, has regulated the infusion. It may not have been the same principle for all judges at any time, nor the same principle for any judge at all times. But a choice there has been, not a submission to the decree of Fate; and the considerations and motives determining the choice, even if often obscure, do not utterly resist analysis. I do not mean that even those considerations and motives which I shall class as conscious are always in consciousness distinctly, so that they will be recognized and named at sight. Not infrequently they hover near the surface. They may, however, with comparative readiness be isolated and tagged, and when thus labeled, are quickly acknowledged as guiding principles of conduct. More subtle are the forces so far beneath the surface that they cannot reasonably be classified as other than subconscious. It is often through these subconscious forces that judges are kept consistent with themselves and inconsistent with one another. We are reminded by William James in a telling page of his lectures on Pragmatism that every one of us has in truth an underlying philosophy of life, even those of us to whom the names and the notions of philosophy are unknown or anathema. There is in each of us a stream of tendency, whether you choose to call it philosophy or not,[1] which gives coherence and direction to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognize and cannot name have been tugging at them — inherited instincts, traditional beliefs, acquired convictions; and the resultant is an outlook on life, a conception of social needs, a sense, in James's phrase, of "the total push and pressure of the cosmos," which, when reasons are nicely balanced, must determine where choice shall fall. In this mental background every problem finds its setting. We may try to see things as objectively as we please. None the less, we can never see them with any eyes except our own. To that test they are all brought — a form of pleading or an Act of Parliament, the wrongs of paupers or the right of princes, a village ordinance or a nation's charter.

---

[1] Reprinted by permission from B. N. Cardozo, *The nature of the judicial process*, 1921, pages 10–13, 98–105, 112–116.

Few rules in our time are so well established that they may not be called upon any day to justify their existence as means adapted to an end. If they do not function, they are diseased, they must not propagate their kind. Sometimes they are cut out and extirpated altogether. Sometimes they are left with the shadow of continued life, but sterilized, truncated, impotent for harm.

We get a striking illustration of the force of logical consistency, then of its gradual breaking down before the demands of practical convenience in isolated or exceptional instances, and finally of the generative force of the exceptions as a new stock, in the cases that deal with the right of a beneficiary to recover on a contract. England has been logically consistent and has refused the right of action altogether. New York and most states yielded to the demands of convenience and enforced the right of action, but at first only exceptionally and subject to many restrictions. Gradually the exceptions broadened till today they have left little of the rule. It survives chiefly in those cases where intention would be frustrated or convenience impaired by the extension of the right of action to others than the contracting parties. Rules derived by a process of logical deduction from preëstablished conceptions of contract and obligation have broken down before the slow and steady and erosive action of utility and justice.

---

[1] Cf. N. M. Butler, *Philosophy*, pages 18, 43.

We see the same process at work in other fields. We no longer interpret contracts with meticulous adherence to the letter when in conflict with the spirit. We read covenants into them by implication when we find them "instinct with an obligation" imperfectly expressed. "The law has outgrown its primitive stage of formalism when the precise word was the sovereign talisman, and every slip was fatal." Perhaps it is in the field of procedure that we have witnessed the chief changes; though greater ones must yet be wrought. Indictments and civil pleadings are viewed with indulgent eyes. Rulings upon questions of evidence are held with increasing frequency to come within the discretion of the judge presiding at the trial. Errors are no longer ground for the upsetting of judgments, with the ensuing horror of new trials, unless the appellate court is satisfied that they have affected the result. Legislation has sometimes been necessary to free us from the old fetters. Sometimes the conservatism of judges has threatened for an interval to rob the legislation of its efficacy. This danger was disclosed in the attitude of the courts toward the reforms embodied in codes of practice, in the days when they were first enacted. Precedents established in those times exert an unhappy influence even now. None the less, the tendency today is in the direction of a growing liberalism. The new spirit has made its way gradually; and its progress, unnoticed step by step, is visible in retrospect as we look back upon the distance traversed. The old forms remain, but they are filled with a new content. We are thinking of the end which the law serves, and fitting its rules to the task of service. Not the origin, but the goal, is the main thing. There can be no wisdom in the choice of a path unless we know where it will lead. The juristic philosophy of the common law is at bottom the philosophy of pragmatism. Its truth is relative, not absolute. The rule that functions well produces a title deed to recognition. Only in determining how it functions we must not view it too narrowly. We must not throw to the winds the advantages of consistency and uniformity to do justice in the instance. We must keep within those interstitial limits which precedent and custom and the long and silent and almost indefinable practice of other judges through the centuries of the common law have set to judge-made innovations. But within the limits thus set, within the range over which choice moves, the final principle of selection for judges, as for legislators, is one of fitness to an end. We do not pick our rules of law full-blossomed from the trees. Every judge consulting his own experience must be conscious of times when a free exercise of will, directed of set purpose to the furtherance of the common good, determined the form and tendency of a rule which at that moment took its origin in one creative act. Law is, indeed, an historical growth, for it is an expression of customary morality which develops silently and unconsciously from one age to another. But law is also a conscious or purposed growth, for the expression of customary morality will be false unless the mind of the judge is directed to the attainment of the moral end and its embodiment in legal forms. Nothing less than conscious effort will be adequate if the end in view is to prevail. The standards or patterns of utility and morals will be found by the judge in the life of the community.

My analysis of the judicial process comes then to this, and little more: Logic, and history, and custom and utility, and the accepted standards of right conduct, are the forces which singly or in combination shape the progress of the law. Which of these forces shall dominate in any case, must depend largely upon the comparative importance or value of the social interests that will be thereby promoted or impaired. One of the most fundamental social interests is that law shall be uniform and impartial. There must be nothing in its action that savors of prejudice or favor or even arbitrary whim or fitfulness. Therefore in the main there shall be adherence to precedent. There shall be symmetrical development, consistently with history or custom when history or custom has been the motive force, or the chief one, in giving shape to existing rules, and with logic or philosophy when the motive power has been theirs. But symmetrical development may be bought at too high a price. Uniformity ceases to be a good when it becomes uniformity of oppression. The social interest served by symmetry or certainty must then be balanced against the social interest served by equity and fairness or other elements of social welfare. These may enjoin upon the judge the duty of drawing the line at another angle, of staking the path along new courses, of marking a new point of departure from which others who come after him will set out upon their journey.

If you ask how he is to know when one interest outweighs another, I can only answer that he must get his knowledge just as the legislator gets it, from experience and study and reflection; in brief, from life itself. Here, indeed, is the point of contact between the legislator's work and his. The choice of methods, the appraisement of values, must in the end be guided by like considerations for the one as for the other. Each indeed is legislating within the limits of his competence. No doubt the limits for the judge are narrower. He legislates only between gaps. He fills the open spaces in the law. How far he may go without traveling beyond the walls of the interstices cannot be staked out for him upon a chart. He must learn it for himself as he gains the sense of fitness and proportion that comes with years of habitude in the practice of an art. The law which is the resulting product is not found, but made. The process, being legislative, demands the legislator's wisdom.

There is in truth nothing revolutionary or even novel in this view of the judicial function. It is the way that courts have gone about their business for centuries in the development of the common law. The difference from age to age is not so much in the recognition of the need that law shall conform itself to an end. It is rather in the nature of the end to which there has been need to conform. There have been periods when uniformity, even rigidity, the elimination of the personal element, were felt to be the paramount needs. By a sort of paradox, the end was best served by disregarding it and thinking only of the means. Gradually the need of a more flexible system asserted itself.

2. HOW THE JUDGE MAKES LAW[1]

By E. R. Thayer

The common law, strictly so called, must be taken as a type. This limitation of the discussion to the common law makes it necessary to lay aside one subject of which notice must here be taken, namely, the great system administered by courts of equity. Growing up, not as a separate system of law, but merely as another mode of administering the common law, and in this way of remedying its defects, it has by its operation given rise to a great body of rights, derivative in their nature and based on its peculiar remedies. If our object were a history of judicial legislation in the past, nothing would deserve more attention than the remarkable borrowing of equitable principles which for one cause or another has gone on in courts of law. At the present time, however, the principles of equity are comparatively fixed and definite, and the two systems of law and equity are to a great extent administered by the same courts and merged into one complete whole.

It is important to observe at the outset how the process presents itself to the judges, the persons in whose control it lies. Their testimony is unanimous. From the earliest times to the present day they have agreed in what Austin has stigmatized as the "childish fiction" that they were "not delegated to pronounce a new law, but to maintain and expound the old one." This idea of applying the existing law, a body of "statutes worn out by time," as Chief Justice Willes called the common law, appears everywhere in our reports. The judges constantly stop short of the most tempting equity with the declaration that they are to declare, not to make, the rule of law. Only by a study of the cases themselves can an exact analysis of the methods of the common law be reached.

The distinguishing feature of the English law is the binding authority which it attributes to a former decision. This respect for precedent, in which our system is unique, has much importance in the present inquiry. It is the circumstance, together with the absence of codification, which gives rise to the cardinal feature of our law, i.e., that it is bound up with the facts of particular cases. It is this feature which furnishes a clew to the characteristic processes of the common law. To illustrate these processes of the common law, and the results to which they lead, it will be useful to examine somewhat in detail one or two representative cases.

---

[1] Reprinted by permission from E. R. Thayer, "Judicial legislation," *Harvard Law Review*, Vol. V, pages 172–201.

In the famous case of Fletcher *v.* Rylands,[1] the defendant had collected large quantities of water in a reservoir on his land. He had employed a competent contractor to make the reservoir, and was himself guilty of no negligence. But in consequence of some old workings in the defendant's land, of the presence of which he was ignorant, the support of the reservoir gave way, and the water, escaping underground through these workings, flooded the plaintiff's mine. For the damage thus caused, the plaintiff brought suit. The question was thus raised whether the defendant was bound to keep the water in at his peril, or merely to use due care. There were the competing analogies, on the one side, of the absolute liability imposed by the common law for damage done by trespassing cattle, by fire, by escaping filth, or savage beasts; on the other, of the large class of cases where a defendant who drives along the street, or handles a gun, or raises a barrel into his warehouse, is held responsible only for actual prudence. The argument for the contending parties dealt with principles. For the plaintiff it was urged that the only quality common to cattle, fire, and filth was that of substances collected on the land of one man which might, by escaping, damage his neighbor. The specific rules laid down by these cases were therefore to be regarded as illustrations of a general principle, applying to water as well as to cattle or filth, that a person who brought on his land something which, however harmless while there, would naturally do mischief if it escaped, must keep it in at his peril. The defendant relied on the conflicting principle that in case of a duty imposed by law (as distinguished from one created by the agreement of the parties), nothing more than actual prudence was required, and dealt with the cases relied on by the plaintiff as isolated exceptions having no bearing on the case in hand. This view was adopted by the Court of Exchequer. But this judgment was reversed in the Exchequer Chamber. Blackburn, in an elaborate opinion, which is an excellent example of common-law reasoning, indorsed the principle suggested by

[1] 3 H. & C. 774; L. R. I.

the plaintiff, which, he said, applied equally, "whether the thing be beasts, or water, or filth, or stenches." He thus rejected the broad principle contended for by the defendant; and he distinguished the cases of collision on the highway, and the like, on the ground that there the plaintiff, by entering into a situation where the chance of accident might reasonably be foreseen, took the risk upon himself. The House of Lords affirmed the judgment of the Exchequer Chamber and suggested as the test the question whether the use of the defendant's land was "natural" or "non-natural," the present case being an illustration of the latter class.

The noticeable feature of this course of reasoning is the scrutiny and comparison of previous cases, and the extraction from them of a principle within which this case is held to come. The process thus takes on the form of declaring the existing law, of applying the principle, like a statutory rule, to the facts. But these "principles" which are under discussion, and of which the cases are regarded as specific applications, are clearly not in all respects like definite rules of law. They differ from such rules in their scope and precision, approaching in this respect those general maxims or ground rules by which the whole reasoning process is carried on. They are rather to be regarded as guides in drawing analogies, and their precise limits are in dispute. Moreover, a statute necessarily precedes its application; here the process is reversed. The cases came first, the statement of the principle afterward, as something extracted from them. They cannot strictly be called applications, or, at any rate, conscious applications, of the principle. Some of them, at least, were probably decided without any thought of it. The law in regard to cattle goes back to the earliest times. Whatever its historical origin, it certainly antedates modern methods and conceptions. And so the liability for fire, whenever it was settled, was probably not reached by the application of any such general principle as that laid down by the court in Fletcher *v.* Rylands. As to these two articles, however, cattle and fire, the law is fixed, and to this extent we have settled rules of law. Strictly regarded, that case merely draws an analogy from the previous ones. The actual decision has, in a way, a double effect. Besides adding another precise rule, a judicial declaration of the legal consequences of collecting water, it has the further effect of binding together the class of cases to which it belongs, of shaping and refining their principle, and at the same time limiting the conflicting principle. The liability for cattle, originally a rule by itself, has passed over into an instance of this broader principle. In many respects, however, the precise outlines of the principle are still left vague and undetermined. What is the test, it may be asked, of a substance which comes within it? Is it limited to things which have a tendency to escape, or would it include anything likely to do damage if it escaped — a pile of boards, for example? Does the principle apply only to adjoining landowners? These and many other questions are left open by Fletcher *v.* Rylands, and for the most part remain unanswered at the present time. In this condition the subject is likely to remain until a succession of later cases, falling on one side or the other of the line, has brought out the precise limits of the rule. Fletcher *v.* Rylands shows one stage in the growth of a rule of law by means of decided cases.

At a more advanced stage in the process, the result of a series of decisions, gradually grouped and classified, is a definite rule of law accepted and enforced by the courts in all respects like a legislative enactment.

In the process of "judicial codification," the order of development is seen to be, first, the cases; then the rule, growing up by successive decisions and taking on a definite shape; then the application of that rule, like a statute, to further cases. This development, however, is very gradual. The process of working out analogies by a principle, and that of applying the final judge-made rule, shade into one another by imperceptible degrees, and it may be impossible to say at any given time whether a decision is new law, or is merely the application of an existing rule. Different branches of the law reach the final stage at very different periods, according to the lines in which the society develops. As the pursuits and interests of men turn in one direction, the cases on that subject become numerous, the analogies multiply, and the law passes into a comparatively rigid condition. This happened at an early time to the English law of real property in some branches, and its growth has therefore required the aid of the legislature to an unusual degree. On other subjects we are at the present time passing through the earlier stages of the process. In the law of corporations, for example, the courts are now engaged in examining the essential features of these important instruments of modern civilization, and in testing the various principles and analogies offered by the cases, and have yet to reach the situation where definite and comprehensive rules emerge from the chaos.

Such is the method of reasoning by which a case is decided under our system. That the process involves the development and expansion of the law at the hands of the judges is plain enough. It must needs be so because of two circumstances — the effect which we give to precedent, and the infinite variety of facts which present themselves. The law at any given time is limited to rules actually prescribed or enforced by the sovereign. As new states of fact constantly come up for determination, and the decision once given becomes in turn a precedent for future reasoning, it is impossible that the law should not grow; and it is thus that the great body of our law has developed. It is highly important, however, to distinguish between the result and the process by which it is reached, and thus to avoid the errors of those who, looking only at the former, conclude that the judge under a system of case law is a mere subordinate legislator of a peculiar kind. In one sense it is true that the judge makes law; but this is because of the effect which our system gives to his decision, an effect which is equally given (and the consequences of this are important) to his decision in applying a statute. In another sense it is equally true to say with Blackstone that he is merely declaring the existing law. The process in which he is engaged is that of deciding a case, a process which antedates not merely legislation proper, but the conception of law itself. This decision is reached by a course of reasoning from existing data by which, if carried out with entire strictness, he would be as closely limited as if dealing with a statute. It is this growth which necessarily attends the ordinary administration of that body of "written case-law" which we know as the "common law."

Judicial legislation is a necessary element in the development of the common law. This is a consequence, in the first place, of our judicial machinery and our mode of treating previous decisions; and secondly, and especially, of the shape in which facts present themselves. In the reasoning process by which the various combinations of facts are analyzed and the law applied to them, there is necessarily growth and development, and this occurs also to some extent in statute law.

The extent to which this judicial legislation should properly go is a question on which precise rules cannot be laid down. It is the duty of the judge to apply the law to such facts as come before him. He must perform his office with wisdom and justice, guided by a method of reasoning which the practice of English courts for centuries has made familiar. So far as this process, carried out as his predecessors have done before him, results in legislation, such legislation is legitimate and necessary. No more precise rule can be laid down to meet all cases.

How far may the judge in carrying on this process undertake to discard old doctrines and substitute new ones as society appears to require it? Here again no absolute rule can be laid down. It may happen that a change of customs makes a change in the law so plainly necessary that it is mere good sense for the court to give effect to it, as was done, for example, in a branch of the law depending preëminently upon custom, by the American decisions which recognized the negotiability of bonds. The history of our law shows repeated instances where courts have failed, through an unreasoning conservatism, to cut away technicalities utterly meaningless and having their origin in conceptions long since passed away; and the law as a science has suffered accordingly. A certain amount of judicial legislation of this kind might properly be regarded as incidental to the mere wise and just administration of the law. But no such step should be taken without great caution and a knowledge of all its bearings. The proper tendency for modern courts is not to be found by considering the acts of great judges in the past, whatever their services to the law, who were acting under other surroundings and influences; it depends on the conditions of our own time. We live under a government where access to the legislature is easy. Even when a reform seems most plainly desirable, the conditions under which the judge works often make it preferable that the change should come from the legislature. One step by the court, unless followed up, can cause nothing but confusion; and the fact that the actual decision alone is binding makes it often doubtful how far a later court will continue the course upon which its predecessor has entered. Whether such a course should be begun depends on all the circumstances of the case. The only sure guides are common sense and a knowledge of its history.

3. A FURTHER ILLUSTRATION

NORWAY PLAINS COMPANY *v.* BOSTON AND MAINE RAILROAD [1]

SHAW, C. J.: The liability of carriers of goods by railroads, the grounds and precise extent and limits of their responsibility, are coming to be subjects of great interest and importance to the community. It is a new mode of transportation, in some respects like the transportation by ships, lighters, and canal boats on water, and in others like that by wagons on land; but in some respects it differs from both. Though the practice is new, the law, by which the rights and obligations of owners, consignees, and of the carriers themselves, are to be governed, is old and well established. It is one of the great merits and advantages of the common law, that, instead of a series of detailed practical rules, established by positive provisions, and adapted to the precise circumstances of particular cases, which would become obsolete and fail, when the practice and course of business, to which they apply, should cease or change, the common law consists of a few broad and comprehensive principles, founded on reason, natural justice, and enlightened public policy, modified and adapted to the circumstances of all the particular cases which fall within it. These general principles of equity and policy are rendered precise, specific, and adapted to practical use, by usage, which is the proof of their general fitness and common convenience, but still more by judicial exposition; so that, when in a course of judicial proceeding, by tribunals of the highest authority, the general rule has been modified, limited, and applied, according to particular cases, such judicial exposition, when well settled and acquiesced in, becomes itself a precedent, and forms a rule of law for future cases, under like circumstances. The effect of this expansive and comprehensive character of the common law is, that whilst it has its foundations in the principles of equity, natural justice, and that general convenience which is public policy; although these general considerations would be too vague and uncertain for practical purposes, in the various and complicated cases, of daily occurrence, in the business of an active community; yet the rules of the common law, so far as cases have arisen and practices actually grown up, are rendered, in a good degree, precise and certain, for practical purposes, by usage and judicial precedent.

---

[1] 1 Gray (Mass.) 263, 266 (1854).

Another consequence of this expansive character of the common law is that when new practices spring up, new combinations of facts arise, and cases are presented for which there is no precedent in judicial decision, they must be governed by the general principle, applicable to cases most nearly analogous, but modified and adapted to new circumstances, by considerations of fitness and propriety, of reason and justice, which grow out of those circumstances. The consequence of this state of the law is that when a new practice or new course of business arises, the rights and duties of parties are not without a law to govern them; the general considerations of reason, justice, and policy, which underlie the particular rules of the common law, will still apply, modified and adapted, by the same considerations, to the new circumstances. If these are such as give rise to controversy and litigation, they soon, like previous cases, come to be settled by judicial exposition, and the principles thus settled soon come to have the effect of precise and practical rules. Therefore, although steamboats and railroads are but of yesterday, yet the principles which govern the rights and duties of carriers of passengers, and also those which regulate the rights and duties of carriers and goods, and of the owners of goods carried, have a deep and established foundation in the common law, subject only to such modifications as new circumstances may render necessary and mutually beneficial.

4. JUDICIAL LAWMAKING UNDER MODERN CONDITIONS[1]

By Roscoe Pound

The conditions of judicial lawmaking in the United States are by no means those which are demanded for the best development of the common law in an era of growth. The institution of an elective judiciary, holding for short terms, which prevails in so many of our jurisdictions, does not give us courts adequate to such a task. Indeed, the illiberal decisions of which complaint was made so widely at the beginning of the twentieth century were largely, one might say almost wholly, the work of popularly elected judges. A system of lawmaking through judicial empiricism calls for much more in a judge than popularity, honest mediocrity, or ignorant zeal for the public welfare may insure. In the period of growth in the fore part of the last century there was a strong, independent bench. That American law grew so rapidly and was fashioned so well up to the Civil War and stood still so steadfastly thereafter, was by no means wholly due to causes of general operation that made for rigidity of law throughout the world in the nineteenth century. It is demonstrable that this change was due in large measure to a change in the character of the bench in our state courts, closely connected with the change in the mode of choice and tenure of judges which swept over the country after 1850. Moreover, the condition of pressure under which causes are passed upon in the American urban communities of today, where crowded calendars preclude the thoroughness in presentation and deliberation in judicial study which were possible a century ago, prevent judicial lawmaking from achieving its best. An example from the law reports will make clear what this means. In 4 Wheaton's Reports, reporting the decisions of the Supreme Court of the United States during the year 1819, decisions in thirty-three cases are reported. In other words, seven judges decided thirty-three cases in that year. In 248–251 United States Reports, we may see the work of that court a hundred years later. In 1919 a court of nine judges wrote two hundred and forty-two opinions and disposed of six hundred and sixty-one cases. In other words, merely in the way of writing opinions, a judge of that court does five times what he had to do a century ago. This does not mean merely that the judges are compelled to work rapidly and with a minimum of deliberation. In order to hear these cases at all, the time allowed to counsel must be greatly abridged. Hence where a century ago counsel were heard until every detail had been gone into thoroughly in oral argument, today the court is compelled to restrict argument to an allowance of an hour and a half to counsel upon each side. In state courts the pressure has become even greater. Thus at a time when constructive work of the highest order is demanded, when questions are rising more difficult than any with which American judges had to deal in our classical constructive period — the period from the Revolution to the Civil War — in many of our states the courts are none too well equipped to do the work effectively, and in all of them the pressure of business is such that work of the highest type is all but precluded.

---

[1] Reprinted by permission from Roscoe Pound, *The spirit of the common law*, Marshall Jones and Company, 1921, pages 7–9.

5. SOME LIMITATIONS OF JUDICIAL LAWMAKING[1]

By Harlan F. Stone
Former Dean, Columbia Law School; now Justice, United States Supreme Court

For more than eight centuries the English-speaking peoples have been building up their system of law, both judge-made and statutory. While the layman often thinks of law in terms of statutes, much the greater part of law is in fact made up of those rules which are declared by judges and which have the force of law only because they are so declared. This mass of judge-made law has been developed by the English common-law system of precedent which may be roughly, though perhaps not with complete accuracy stated to be the system whereby the precept or rule of decision adopted in a particular case shall be deemed to be controlling in all later cases involving a set of facts so nearly similar to those in the decided case as reasonably to call for the application of the like rule or precept. Every judicial decision, therefore, not only determines the rights of litigants but becomes also a new source of law or legal precept to govern future cases as they arise. Such a system, like most human contrivances for enabling mankind to dwell together in peace and harmony in civilized communities, has its strength and its weaknesses, its advantages and its disadvantages. This process of making law always with reference to an immediate and pending controversy and in the light of its particular facts gives to the common law an adaptability and a capacity to meet and deal with new situations which has never been surpassed, if indeed it has been equaled by any other system of law. This gradual building up of law by precedents has given to the common-law system a toughness and vitality which is enabling it to supplant other systems of law wherever it comes in contact with them. On the other hand this same toughness and vitality tends to perpetuate its errors and its faults as well as its merits. The anomalous precedent, the legal anachronism once lodged in the body of the common law becomes a new source of inharmonious legal doctrine which case law can never quite control or bring into harmony with logical systems and which often can never be completely adjusted to social convenience and needs. Courts do not feel free to overrule precedent, not only because such a course is contrary to established legal tradition, but because the retroactive effect of all judge-made law may affect harshly the interests of those who have adopted a course of conduct in reliance upon the very precedent which the court is called upon to overrule. The only other procedure by which courts can counteract the influence of the anomalous precedent is to limit its application by arbitrary and often fine-spun distinctions of fact in new cases as they arise, a procedure which encourages litigation and adds to the complexity and uncertainty of the law. This is a process which has been going on in the development of the English common law for fully six centuries since we began the practice of recording and publishing judicial opinions as authoritative sources of our law, and the consequent growth in the complexities and uncertainties of our law has been steadily progressing, with an added acceleration in this country by reason of the creation here of our Federal courts and of independent systems of courts in forty-eight different states.

---

[1] Reprinted by permission from *Proceedings* of the Academy of Political Science, Vol. X, No. 3, 1923, pages 3–5.

Since judicial opinions are the only authoritative source of the common or unwritten law, and since judicial opinions are always prepared with reference to the particular controversy and only incidental regard for the scientific and orderly development of the law as a system, there has existed no agency, no device, and no procedure for the examination of our legal doctrine in systematic fashion with reference to the body of the law as an organized whole and in the light of those social and economic functions for the guidance and control of which law itself exists. Under the Roman law system, since precedent was not controlling, it was possible to give to the writings of the great jurists a weight and authority which our own commentators on the common law in competition with judicial precedent have never acquired. Those engaged in the study of the common law as a science have long recognized that the creation of such an agency for the reëxamination of our accumulated mass of precedent, so that it may take on a more orderly and scientific form and may slough off its age-long accumulation of anomalies and mistaken precedents, is a necessity if we are to preserve to future generations its undoubted merits as a flexible, adaptable, and vital system of law.

The profession at large has been much more slow to recognize the necessities of the situation. We have been content to do the day's work in the accustomed way, by searching the books for the precedent controlling our case and presenting the results of our researches to the courts in voluminous briefs. Even though laborious, this process has seemed to us better than that we should turn to the evils of a system we know not of. But the experience of recent years has brought home to the bar the unpleasant realization that we cannot go on doing our work in the old accustomed way. The very mass of our authoritative legal literature embodied in judicial opinions and the rapidity of its growth preclude our adhering to the old methods. Our libraries are bursting with law reports. At the present rate of accumulation no library ever designed or built by the hand of man could in a few generations house the books of a complete working law library. No lawyer engaged in practice can even now keep abreast of the judicial opinions of his own state. When with the aid of digests and citations he gathers the precedents relating to any particular problem, he too often finds in them only confusion and uncertainty if they are not actually conflicting.

XLV. THE AMERICAN DOCTRINE OF JUDICIAL REVIEW

1. THE JUDICIAL VETO

By Joseph McGoldrick
Department of Government and Public Law, Columbia University

It was not wholly by accident that Adam Smith's *Wealth of nations* appeared in the very same year as our Declaration of Independence. Adam Smith's little volume marks a political revolution just as truly as our own. Though the American leaders were talking in terms of political freedom, they were not unmindful of economic circumstances. Any candid examination of the whole period shows that they were motivated quite as much by economic aspirations as by political repression. Our Constitution likewise was sought as a means of freeing commerce from the hampering policies of the states and of putting certain classes of commercial contracts beyond state impairment.

The doctrine of *laissez faire* is more than a theory in the United States. It is almost the bedrock of the law of the land. Natural enough to the needs and desires of a frontier population, the theory secured a peculiar lodgment in our political and legal structure by reason of our peculiar federal mechanism. Montesquieu's theories of separation of powers and Locke's dogmas of limited government were the commonly accepted truisms of the constitution-making era. The men who labored in Philadelphia in the summer of 1787 did more than establish a limited government; they fashioned a federal one. The federal character of our polity was, in the first instance, the major premise of the American doctrine of judicial review. There is ample logic to support the contention that in any federal structure there must be some umpire to keep the state and federal teams within the rules. There can be no quarrel with this.

But the American apotheosis of *laissez faire* did not come until the adoption of the fourteenth amendment at the close of the Civil War. This amendment, with its broad but mild declaration that "no state shall deprive any person of life, liberty, or property without due process of law" (the phrase having been borrowed from the fifth amendment, which similarly restricts Congress), has been the charter of business for the business men. It seems curious that this simple provision tucked away in the fourteenth amendment, which, with its companions the thirteenth and fifteenth amendments, was ostensibly designed to protect the negro in his newly found freedom, should serve its present purpose.[1] Likewise its counterpart the fifth appears on its face to be concerned with the guarantee of trial by jury and kindred ritual. But both have been and are the basis of a change in our constitutional structure that is not less profound because it is not fully appreciated. Whether by reason of the peculiar features of our constitutional system or through the interplay of subtler social forces, the fact remains that our system of judicial review, particularly since the Civil War, has involved a great deal more than keeping the state and Federal governments from encroaching on each other. Our courts have gone much further and conceived it to be their function to supervise not only the workings of these two sets of government in relation to one another, but to protect our people from the workings of government generally.

The effect of these "due process" clauses is to create a new chamber to our national and state legislatures. If, as a novice might readily suppose, enactment by a legislature or by Congress and approval of the appropriate executive, all in the duly prescribed manner, constituted due process of law, our problem would be a comparatively simple one. But it does not. For present purposes we may ignore the term "due process" — though these clauses are often known by that name — for the courts will permit no amount of regularity and formality of itself to sustain a legislative enactment. What then? The courts have answered that these "due process" clauses forbid all legislative interference with private conduct or property except legitimate exercise of the police power. It is difficult to imagine any legislative enactment which will not operate to deprive some one of some liberty of conduct or freedom in the use of his property. The courts have admitted this when they have declared that the prohibition of the "due process" clause reaches to anything not sanctioned within the police power. But they have been unable or unwilling to define or delimit this police power beyond the general statement that it is the power inherent in sovereignty reasonably to protect the health, safety, welfare, or morals of the community. Beyond this there is no answer save by the tedious process of inclusion and exclusion by which the courts slowly mark out a line. Each legislative Act is subject to immediate challenge by anyone who feels that it imposes undue restraint upon his liberty or the use of his property. Until the last judge of the last court has spoken, one man's guess is as good as another's. To put it more concretely, an effort of any state to regulate or control working conditions, commercial competition, standards of quality, prices, or conduct would be, and is usually, speedily tested in the courts to determine whether or not the legislation on which it is predicated exceeded the proper scope of the police power. Nor is there any predetermined standard by which one can with any certainty predict the outcome of such litigation. This is, of course, a legislative rather than a judicial function which the courts are exercising, though their manner of procedure is basically judicial. But even here a change may be noted. Elaborate briefs, often a fat volume or two, are presented expounding the social implications and importance of the decision. On the other hand precedent and the doctrine of *stare decisis* have a weighty influence. An important original question may send the advocates on both sides scurrying back among cases decided in the time of Queen Anne or even Queen Elizabeth. Fundamentally, however, the principles are clear and rarely challenged. The real difficulty comes in their application of them to concrete cases. To take as an illustration the field of labor legislation, we find the United States Supreme Court in Holden *v.* Hardy (1888) [1] accepting a Utah statute limiting the hours of work in mines to eight a day as a reasonable exercise of the state's police power. Some years later, in Lochner *v.* New York (1905),[2] a statute of that state prescribing a ten-hour day for bakers was held an unreasonable restraint upon the liberty of the bakers to contract. More recently we have had the District of Columbia Minimum Wage Law for Women declared unconstitutional,[1] though the courts have uniformly accepted laws regulating the length of the working day, prohibiting night work, and generally prescribing the conditions under which women will be permitted to work. In his dissenting opinion in the minimum wage case, Chief Justice Taft pointed out that the wages paid women have as much to do with the general well-being and the welfare of the race as the conditions under which they work, but the majority thought otherwise. In the last analysis, it will be perceived that this and similar cases come down to a question not of legal analysis but of social fact.

---

[1] It is now clear that this was no accident. The committee that drafted the amendment had in mind, though they made no disclosure of this purpose at the time, that it would effect a substantial protection to corporations (legal persons) against the growing regulations of the states. See C. A. Beard, *Rise and growth of American politics*, Vol. II, pages 111–114.

---

[1] 169 U. S. 366.

[2] 198 U. S. 45.

A similar situation is presented by the problem of controlling employment agencies. The courts, generally, though perhaps not uniformly, accept licensing systems, requirements as to records, and the prohibition of certain mischievous and fraudulent policies, but balk at a proposal to regulate fees. Justice Stone and others who dissented thought this equally reasonable and necessary to prevent the exploitation of those who must patronize these establishments, but again the majority felt otherwise. A reading of the opinion discloses a clash not on questions of law but on questions of everyday fact and public polity. It is noteworthy that the court rarely divides on questions of law and that the most vigorous differences — the five-to-four decisions — have turned on these social questions. Perhaps the worst feature of this method is a lack of frankness as to precisely this point. Having concluded that the restriction under discussion is or is not a reasonable exercise of the police power, the court proceeds to buttress its opinion with such precedents as are suggested by the briefs. Any criticism of the result arrived at is denounced as an attack upon the foundations of our legal and constitutional system. One has only to note the regularity with which certain of the judges are found together on the *laissez faire* side or the reverse to appreciate how important a part one's personal background and social outlook play in his decisions.

There is one other highly significant feature of this method. The decision in the instant case becomes not only a precedent for any similar case thereafter presented; it remains law for an indefinite period. Unless the court reverses itself, which it is always loath to do, nothing short of a constitutional amendment can effect a change. Despite some current notions to the contrary, our constitutions are quite difficult to alter.

---

[1] This of course involved the fifth amendment, which limits the power of Congress in the same way that the fourteenth limits that of the states.

Our city life has tended to focus many problems which perhaps exist in rural conditions but become aggravated in urban congestion. What a man does with property in the country is pretty much his own business; in a city it may inflict costly pecuniary damage upon his neighbors and give the community many vexing burdens. We have allowed our cities to grow up haphazard messes. Today we are reaping the fruits of it in crowded and unseemly living conditions, in slums and ghettos, in congested traffic that is putting our city governments to great expense. Our larger cities are threatening to become unsightly tangled masses that it will cost many millions to beautify or even render habitable and convenient. Our cities represent the logical culmination of unrestrained individual effort. The very lack of governmental guidance and supervision in the past has accumulated a host of pressing problems that will in the end inevitably expand the need for governmental action. Had a few salutary restrictions on private initiative existed a generation or two ago, it would not be necessary, as apparently it is, for the cities to enter the field of municipal housing in order to eliminate slum areas. Had a wise plan of regional development been adopted, with provision for the location of industrial plants at suitable distances from the congested sections of our cities, been laid out, it would not be necessary for our cities to build expensive subways which, if the height of buildings is not carefully curtailed, will soon be crowded beyond their proper capacity. Unrestrained private initiative has created more problems for governments to solve than any bureaucrat could ever have excogitated.

The "due process" clause is but a part of this system. The Federal courts have created for themselves a similar veto over legislation affecting our colonial possessions. It has been held that only the more fundamental portions of the bill of rights, those portions which go to the essence of the power of Congress apply. In the field of public finance we find the courts telling us that public money can be spent only for a public purpose. Any proposed adventure into municipal socialism is subject to scrutiny under this principle. The municipal home rule movement, which includes some seventeen states, might almost be said to create deliberately another sphere of judicial legislation. Courts which interpret laws must inevitably make law in the process. But our courts have a broader power. They are actually a third house in our legislative system. It must be obvious that in respect to the matters mentioned there are no standards other than the judges' conception of what is good public policy. They constitute a house of censors, whose work is fairly remote from popular clamor and whose training and selection have very little reference to this important aspect of their work.

Lastly, it is perhaps noteworthy that, while this is one of the three or four cardinal features of our constitutional system, it is the one which has attracted fewest imitators in other parts of the world. Our federalism and our presidential structure have served as models for constitution-makers in many lands. But possibly because we ourselves have so little appreciation of the true scope of judicial power, or because so much of this power inheres in our unwritten constitution, no other nation has attempted so to endow its courts.

2. PROPERTY, LIBERTY, AND VALUE[1]

By John R. Commons

In the year 1872 the Supreme Court of the United States was called upon, in the slaughter-house cases,[2] to interpret the meanings of the words "property" and "liberty" as used in the Constitution of the United States. The thirteenth amendment to the Federal Constitution, adopted in 1865, prohibited slavery and involuntary servitude except as punishment for crime, and the fourteenth amendment, adopted three years later, prohibited a state from depriving any person of "life, liberty, or property" without "due process of law," and gave to the Federal courts jurisdiction. The legislature of Louisiana had granted to a corporation a monopoly to maintain slaughtering places for stock in the city of New Orleans, and had regulated the charges to be made to other butchers who used these facilities. The latter, through their attorneys, contended that the statute deprived them of both their property and their liberty without due process of law. The Supreme Court divided. If the Court should hold that property meant exchange-value, then the Federal court would take jurisdiction under the amendments. But if property meant only the use-value of physical things, then the court would not interfere with the legislature of Louisiana. Justice Miller, for the majority, declared that the Act was not a deprivation of property or liberty as the terms were used in the thirteenth and fourteenth amendments. The term "liberty," he said, should be construed with reference to the well-known purpose of those amendments, namely, to establish freedom from slavery or personal servitude. Even conceding that the term "liberty," as popularly used, might mean "civil liberty" or the right to buy and sell, yet that aspect of liberty was not included in the meaning of the term as used in the amendments. Prior to the adoption of these amendments the liberty of citizens, whether personal, civil, or economic, was, for the most part, in the keeping of the states. The thirteenth and fourteenth amendments only transferred from the states to the Federal government the protection of such fraction of the total concept of liberty as was comprehended in freedom from personal slavery. All other aspects of liberty were left, as they had been, to the keeping of the states.[1] And as to the meaning of the term "property," as used in the fourteenth amendment, he held that the term retained its common-law meaning of physical things held exclusively for one's own use. Property, according to the fourteenth amendment, meant use-value, not exchange-value. "Under no construction of that provision that we have ever seen," he said, "can the restraint imposed by the state of Louisiana upon the exercise of their trade by the butchers of New Orleans be held to be a deprivation of property within the meaning of that provision."[2] The state of Louisiana had not deprived the butchers of the use-value of their property — it had deprived them of its exchange-value.

---

[1] John R. Commons, *Legal foundations of modern capitalism*, The Macmillan Company, 1924, pages 11–18, 32–36, 47–55, 61–64.

[2] 16 Wall. 36, 1872.

The minority of the Court, however, contended that the police power (which they admitted, of course, might justly deprive a person of liberty or property for public purposes without compensation) could have been exercised in this case without resorting to a monopoly, by merely regulating all of the butchers alike in the interest of public health, but that the monopoly feature of the law deprived the other butchers

[1] 16 Wall. 69–73.

[2] 16 Wall. 81.

of their liberty and property and turned it over to the monopolist. They then went on to define the property and liberty which were thus unjustly taken away, not by a proper exercise of the police power, but by a special privilege granted to the slaughter-house monopolist. A man's "calling," his "occupation," his "trade," his "labor," was property, as well as the physical things which he might own; and "liberty" included his right of choice," his "right to choose a calling, to choose an occupation or trade, to choose the direction in which he would exercise his labor. Justice Bradley, of the minority, for example, declared that the "right to choose one's calling is an essential part of that liberty which it is the object of government to protect; and a calling, when chosen, is a man's property and right. . . . Their right of choice is a portion of their liberty; their occupation is their property." (116, 122.) And Justice Swayne declared, "Property is everything which has exchangeable value, and the right of property includes the power to dispose of it according to the will of the owner. Labor is property, and as such merits protection. The right to make it available is next in importance to the rights of life and liberty." (127.) Thus Justice Swayne defined property as the exchange-value of one's ability to work, and liberty as the right to realize that exchange-value on the labor market.

These minority definitions of liberty and property as exchange-value were unavailing in the slaughter-house cases. The majority held to the older meaning of use-value. Twelve years later the municipal authorities of New Orleans, acting under a new constitution for the state, granted to another company privileges in conflict with those of the original monopolist, thus infringing upon his exclusive right. This time, therefore, the slaughter-house company was plaintiff against the municipality. The majority of the Court now retained its original definition of property and liberty, but now held that not only the original Act, as they had contended before, but also this annulling Act was a proper exercise of the police power.[1] But Justices Bradley and Field, while concurring in the Court's decision, placed it on the grounds of their dissenting opinions in the original slaughter-house cases, and repeated their earlier views that the original Act was itself an unlawful deprivation of liberty and property. In their earlier dissent the minority had not cited any cases

[1] Butchers' Union Co. *v.* Crescent City Co., 111 U. S. 746, 751, 1884.

where the term property had been used in the sense of a trade, occupation, calling, or one's labor, whose value to the owner is in its exchange-value, though they asserted that it *ought* to have that meaning. Thus, in the constitutional sense of the term, they had not been able to controvert Justice Miller's denial that that meaning had ever been given to it. In the later case, however, they suggested the origin of their new definition. Justice Field now stated that this meaning of property was derived from Adam Smith, who had said: "The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable." [1] And Justice Bradley contented himself with saying, "If a man's right to his calling is property, *as many maintain*, then those who had already adopted the prohibited pursuits in New Orleans were deprived, by the law in question, of their property, as well as their liberty, without due process of law." [2] Thus the new meanings of property and liberty were found in Adam Smith and the customs of business, and not in the Constitution of the United States.

After the slaughter-house cases the minority definitions of property and liberty began to creep into the constitutional definitions given by state and Federal courts,[3] as indeed was inevitable and proper if the thing itself was thus changing. Finally, in the first Minnesota rate case, in 1890 [4] the Supreme Court itself made the transition and changed the definition of property from physical things having only use-value to the exchange-value of anything.

This decision was a partial reversal of the decision of the court in the case of Munn *v.* Illinois in 1876.[5] In the Munn case the Supreme Court had held, agreeably to its holding in the slaughter-house cases, that when a state legislature reduced the prices which a warehouse company charged for the use of its services the resulting reduction in exchange-value of the business was not a deprivation of property in the sense in which the word was used in the fourteenth amendment and therefore was not an

---

[1] 111 U. S. 746, 757; Smith, *Wealth of nations*, 1:123 (Cannan ed., 1904).

[2] 111 U. S. 765. (My italics.)

[3] Powell *v.* Pennsylvania, 127 U. S. 678, 684, 1887; Matter of Jacobs, 98 N. Y. 98, 1885; People *v.* Marx, 99 N. Y. 377, 1885; People *v.* Gillson, 109 N. Y. 399, 1888.

[4] Chicago, Milwaukee & St. Paul Ry. Co. *v.* Minnesota, 134 U. S. 418, 1890.

[5] 94 U. S. 113, 1876.

Act which the Federal courts might restrain. It was only a regulation of the "use and enjoyment" of property under the police power of the state. The court went so far as to declare that, if the legislature abused its power, "the people must resort to the polls, not to the courts." [1]

That the state legislatures might possibly abuse their power had been clearly suggested in the decision of the supreme court of Illinois in sustaining the Act of the Illinois legislature, when the Munn case was before that court. The Illinois court had held [2] that the authority was not abused in that case by the Illinois legislature, since the property of the owner was not "taken" from him, in that he was not deprived of the "title and possession" of the property. In this respect the Illinois court adhered to the primitive definition of property as the mere holding of physical objects for one's own use and enjoyment. The legislature, under the police power of the state, might reduce the charges which a warehouse company had established for its services, but that was not "taking" its property. The owners continued to hold their physical property even though deprived of the power to fix the prices for its use. To this Justice Field had rightly answered, "There is indeed no protection of any value under the constitutional provision which does not extend to the use and income of the property, as well as to its title and possession." [3] For, of course, the title of ownership or the possession of physical property is empty as a business asset if the owner is deprived of his liberty to fix a price on the sale of the product of that property.

But Justice Field in the Munn case had gone too far. He denied the authority of *both* the legislature *and* the courts to fix the compensation. The majority had only denied the authority of the Court to fix it. Fourteen years after Munn *v.* Illinois this further issue came up in the Minnesota rate case,[4] and the petitioners for the railroads asked the Court to review the decision in the Munn and similar cases and to restrain the state legislature from fixing finally the prices charged for the use of property. (445.) The court now acceded, and Justice Blatchford, for the majority, wrote, "This power to regulate (police power) is not a power to destroy, and limitation is not the equivalent of confiscation." (456.) And confiscation, or the reasonableness of a rate, "is eminently a question for judicial investigation, requiring due process of law for its determination." (458). Thus Justice Field's definition of property as the exchange-value of property was approved and, therefore, the protection of that property was brought under the jurisdiction of the Federal courts conformably to the fourteenth amendment.

---

[1] 94 U. S. 113, 134.

[2] As interpreted by Justice Field, 94 U. S. 139; Munn *v.* People, 69 Ill. 80, 1873.

[3] 94 U. S. 143.

[4] Chicago, Milwaukee & St. Paul Ry. Co. *v.* Minnesota, 134 U. S. 418, 1890.

But Justice Bradley, who in the slaughter-house cases had agreed with Justice Field, now again dissented (supported by two other justices) and held that the majority opinion asserted an "assumption of authority on the part of the judiciary which . . . it has no right to make." (418, 463.) "If not in terms, yet in effect," he said, "the present cases are treated as if the constitutional prohibition was, that no state shall take private property for public use without just compensation — and as if it was our duty to judge of the compensation. But there is no such clause in the Constitution of the United States." (465.) "There was," he said, "in truth, no deprivation of property in these cases at all. There was merely a regulation as to the enjoyment of property, made by a strictly competent authority, in a matter entirely within its jurisdiction." (466.) In this respect he, like the Illinois court in the Munn case, continued to adhere to the primitive definition of property as the mere exclusive holding of objects for one's own use, a kind of property that is not taken from the owner unless he is deprived of its title and possession, for which he is entitled to just compensation.

The majority, however, now held, as they had not held in the Munn case, that not merely physical things are objects of property, but the *expected earning power* of those things is property; and property is taken from the owner, not merely under the power of *eminent domain* which takes *title* and *possession*, but also under the police power which takes its *exchange-value*. To deprive the owners of the *exchange-value* of their property is equivalent to depriving them of their property. Hence, differently from the Munn case decision, they now held that, under the fourteenth amendment, it is the province of the court and not the legislature, to determine the extent to which that "taking" of the value of property might go and yet not pass beyond the point of confiscation. They thus extended to the exercise of the police power the judicial authority to ascertain just compensation which the judiciary had exercised over the power of eminent domain.[1]

Thus the transition in the definition of property from physical objects to exchange-value was completed. "Title and possession" of physical property could be taken from its owner for public purposes under the power of eminent domain, but only on condition that equivalent value should be paid, such that the owners' assets should not be reduced; and this equivalent value, or just compensation, is a judicial question. Now it is enlarged to read: The exchange-value of property may be taken from its owners under the police power, but only to the extent that they retain sufficient bargaining power to maintain the same exchange-value that they had, and this also is a judicial question. The definition of property is changed from physical things to the exchange-value of anything, and the Federal courts now take jurisdiction.

Evidently, however, the exchange-value of property has no existence if either the owner or expected purchasers are forbidden access to markets where they can sell and buy the property. Hence liberty of access to markets is essential to the definition of exchange-value. This attribute was finally added seven years after the Minnesota rate case, in the Allgeyer case, and the minority definition of liberty in 1872 became the unanimous definition of liberty in 1897.[2] The Court now said: "The liberty mentioned in that amendment (fourteenth) means not only the right of the citizen to be free from physical restraint of his person, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned. . . . His enjoyment upon terms of equality with all others in similar circumstances of the privilege of pursuing an ordinary calling or trade, and of acquiring, holding, and selling property is an essential part of liberty and property as guaranteed by the fourteenth amendment."[3]

---

[1] Under the original constitutional provision that no state should take private property for public use without just compensation.

[2] Allgeyer *v.* Louisiana, 165 U. S. 578, 589, 1897.

[3] *Ibid.*, at 580, 589. This latter sentence was quoted in part from earlier decisions

Furthermore, while liberty of access to markets on the part of an owner is essential to the exchange-value of property, too much liberty of access on the part of would-be competitors is destructive of that exchange-value. During the past three hundred years this excessive liberty has been restrained by the courts in the long line of cases going under the name of "good will" or "unfair competition." Evidently, these decisions of the courts had been designed to protect the exchange-value of property, and now that the definition of property itself had been changed from physical things to the exchange-value of anything, it was an easy step to change the definition of good will from "fair competition" to "property." The long-recognized good will of a business which had always possessed exchange-value, but which was merely the expected beneficial behavior of other people, now became simply a special case of property. Other courts followed, and the transition from the meaning of property as physical things to that of the most ethereal invisibility was reached in 1902 in a case involving the right to exclusive telephonic communication of news to the daily press by mere word of mouth. The lower court then said, "Property . . . is not, in its modern sense, confined to that which may be touched by the hand, or seen by the eye. What is called tangible property has come to be, in most great enterprises, but the embodiment, physically, of an underlying life — a life that, in its contribution to success, is immeasurably more effective than the mere physical embodiment."[1] And, in 1911, by another lower court, Justice Swayne's definition in 1872 of labor as property became "the right to labor in any calling or profession in the future."[2]

The foregoing cases, it will be noted, have turned on a double meaning of property, and the transition is from one of the meanings to both of the meanings. Property, in the popular ordinary usage, the usage of the old common law and the one adhered to in the slaughter-house cases and the

---

cited above, Powell *v.* Pennsylvania, 127 U. S. 678, 684, 1888; quoted in 165 U. S. 578, 590. For a discussion of the change in meaning of these terms while the process was going on, in 1891, see C. E. Shattuck, "The true meaning of the term 'liberty' in those clauses in the Federal and state constitutions which protect life, liberty, and property" 4 *Harvard Law Review*, 365, 1891.

[1] National Telephone News Co. *v.* Western Union Tel. Co., 119 Fed. 294, 299, 1902, by Justice Grosscup.

[2] Gleason *v.* Thaw, 185 Fed. 345, 347, 1911.

Munn case, meant any tangible thing owned. Property, in the later decisions, means any of the expected activities implied with regard to the thing owned, comprehended in the activities of acquiring, using, and disposing of the thing. One is property, the other is business. The one is property in the sense of things owned, the other is property in the sense of exchange-value of things. One is physical objects, the other is marketable assets. . . .

The legal term "liberty" has a twofold economic content, namely, opportunity and power. Yet these two are really but two aspects of one act of the will, namely, choice between two degrees of economic power. This concept of the economic power of property and liberty was first admitted to the decisions of the Supreme Court in the case already cited, of Munn *v.* Illinois, in 1876. Prior to that decision the term "power" had meant only the physical power of the sovereign in enforcing the laws, out of which power came the grants of special privileges or monopolies which were not property, but were arbitrary infringements upon the rights of property. The concept of property itself had come up out of the common law and carried with it the idea of a natural or common-law right of liberty to acquire, use, and dispose of physical things. Hence property was not power — property was liberty, and there was a world of difference between the power of the sovereign and the liberty of the subject. But, in the Munn case, for the first time, it came to be seen that this liberty of private property meant also the economic power of private property. The power of sovereignty was the physical power to compel obedience; the power of property was the economic power to withhold from others what belongs to self but is needed by others. The legislature of Illinois had fixed the maximum charges permitted to be made by grain-elevator and warehouse companies for the handling and storage of grain. This business of a warehouse had always been a private business, and had never been granted any special privilege or franchise by the sovereign either in England or in America. The majority and the minority in the Supreme Court agreed that in the case of a special grant of sovereign power, the power of the sovereign to regulate the charges went along with the grant. The charges must be reasonable, and this was the common-law rule applying to all special grants or licenses, whether express, implied, or claimed by prescription through long usage and consent, such as public ferries, bridges, turnpikes, wharfingers, or hackmen and draymen who made use of the King's highways.[1] The judges disagreed as to whether this sovereign power could lawfully be extended to a grain elevator and warehouse which did not need and did not have a special grant of sovereign power to carry on its business.

The majority introduced a new principle of law, as charged by the minority, in order to sustain the power of the Illinois legislature to fix the prices for handling and storage of grain, and to compel the owners to furnish service at those prices. This was, in effect, the principle that it was *economic conditions* and *not a special grant of sovereignty* that determined the right of the sovereign to regulate prices. The Munn case was not the case of a railway depending on a public franchise, but of a private business. These warehouses, without a special grant of sovereign power, had become strategic centers for control of the prices of grain shipped from the Northwest, by the mere fact of location, character of the business, and power to withhold service. The majority, recognizing this economic fact, held that property lost its strictly private character and became "clothed with a public interest when used in a manner to make it of public consequence and affect the community at large." Thus the *fact* of economic power over the public in withholding service and thus fixing prices need not proceed from a sovereign grant of a privilege, but proceeds, in this case, from the circumstance that the public had come to depend on the use of the owner's private property, and that therefore the owner had employed his property, not merely to his own use and enjoyment, but had devoted it to use by the public. To that extent he must submit to be controlled by the public. (113, 126.)

Justice Field, who, in the slaughter-house cases, had denied the right of the state to restrain liberty, now denied its right to restrain the power to withhold services. He distinguished both between a sovereign privilege and private property, and between the use and enjoyment of the property, and between the use and enjoyment of the property by the owner and the *price* that the owner could charge for its use and enjoyment by others. A sovereign privilege, he agreed, might be regulated as to the compensation, or prices, derived from its exercise, and indeed such regulation was implied in such a grant. "When," however, "the privilege ends, the power of regulation ceases." (147.) And the owner of the private property might be restrained, under the police power, as to its *use and enjoyment* if that became dangerous to the life and health of others, but *not as to the compensation* or price charged for its use by others. The police power, he thus held, extended only to the *use* and *enjoyment*, that is, to the use-value of things, and *not* to the *compensation* for the use, that is, the prices of things, except in cases where some right or privilege is conferred by the government which gives the beneficiary special advantage over others. "In the case of the warehousemen of Chicago no right or privilege is conferred by the government upon them." (113, 149.) "Their buildings are not nuisances." (148.) "The business of a warehouseman was, at common law, a private business, and is so in its nature." (154.)

---

[1] 94 U. S. 113, 149, 1876.

Notwithstanding these cogent and accurate historical objections of Justice Field, supported by two other justices, the majority of the Court recognized that the coercive power of property emerges with changes in economic conditions, even when not supported by a special grant of sovereignty. For it was evidently not the health of the public that was menaced by the warehouses but the *prices* that the public as producers and consumers should receive and pay for food. And so, in sustaining the authority to restrain that economic power, they reduced the scope of property by enlarging the police power of the state legislatures. But the property which they reduced in scope was not the ownership of physical property — it was the ownership of the exchange-value of that property.

The decision in Munn *v.* Illinois recognized for the first time the economic power of property, or power to withhold, growing out of the economic conditions, as distinguished from the physical power of sovereignty, or power to compel, exercised on behalf of citizens as their privilege or "liberty." Thenceforth it would require, not a special, personal favor of the sovereign in order to justify the legislature in regulating the prices to be derived from that favor, but a mere showing that the citizen had engaged in business upon which other citizens depended for their liberty and property. The grant of power over citizens in fixing prices now comes, not from the sovereign directly, but indirectly from the citizen's ownership of a kind of property to which that economic power attaches. The transition is made from a legal monopoly, the ancient "liberty" of the subject to exercise sovereign power, to a "natural" monopoly, the modern liberty to exercise economic power, since it proceeds automatically from economic conditions rather than designedly from an act of the sovereign. Previously it was only the grant of a special privilege that gave to the sovereign the right to prevent extortion by regulating the prices charged, and *private property* was *not* such a grant from the sovereign but was a natural right derived from the common law, which expressed the common usages of the people without privilege, and therefore carried the natural right of liberty in fixing prices. Now, when the grant of special privilege no longer avails, another source of authority, the "police power," which had been used only to prevent excessive nuisance, is enlarged to prevent excessive economic power.

Where the decisions that followed the minority in the slaughter-house cases enlarged property at the expense of sovereignty, the police power enlarges sovereignty at the expense of property. The citizen himself, since the Munn decision, now takes the initiative without waiting for the sovereign to act, and of his own free will grants to the sovereign the authority to regulate his prices, because he no longer employs his property solely for his own use and enjoyment, but he devotes it to the use of other citizens who necessarily depend upon it for the prices that give value to *their* liberty and property. Liberty is no longer defined merely by the dimensions of choice of opportunity, as was done by the minority in the slaughter-house cases. It is now defined also by the dimension of economic power.

This dimension was not conceded by the minority in the Munn case. Had that case been one of a railroad with a franchise to operate a highway, the minority would doubtless have not dissented, for such a franchise is a special grant of sovereign power. But the case was that of a warehouse without a public franchise, and the minority could not see that mere property as such, when not aided by a franchise, could possess a similar kind of power. If, however, property, as perceived by the majority, did possess this kind of power, it followed, by a stretch of the implied powers of sovereignty, that the sovereign should have the power to restrain the owner of that property. This the majority affirmed, and in doing so, it enlarged the definition of the "police power" beyond the mere control of the use and enjoyment of property where prejudicial to health or comfort, to the control of the bargaining power of property where prejudicial to the bargaining power of others. The police power was thus extended from use-value to exchange-value, from physical things to business assets.[1]

Yet the decision in the Munn case left the authority to exercise this enlargement of the police power solely in the hands of the legislature. This was because, as we noted above, the Court had not yet changed the definition of property from physical things to the prices of things. Not until the first Minnesota rate case,[2] already referred to, fourteen years after the Munn case, was this change made. The result was, after 1890, that the judicial branch of government, rather than the legislative branch, took jurisdiction of the police power in determining how far the legislature might go in exercising it. The Munn case recognized the economic power of property, distinguished from the economic power of a monopoly; the Minnesota rate case defined this economic power, or exchange-value, as the essence of property, which therefore could not be taken from its owner except by judicial process instead of legislative process. The rate case reversed the Munn case as to the limits of the police power, but not as to the definition of economic power. . . .

Modern economic theory started with the industrial revolution of the eighteenth and nineteenth centuries. The steam engine was invented by John Watt in the same year that his friend, Adam Smith, published the *Wealth of nations*. This coincidence of wealth and machinery explains, in part, the prominence of physical things in the form of commodities, rather than legal relations in the form of transactions, which dominated economic theory for a hundred years.

---

[1] See Justice Field's criticism that the police power had never before been extended to the compensation for the use of property except where "some right or privilege" was conferred by government, 94 U. S. 146. At a later date the supreme court of Oregon, in the minimum-wage case, referring to this concept of the police power, said: "When new conditions arise which injuriously affect the health or morals or welfare of the public, we no longer say that we will expand the police power to reach and remedy the evil. Instead we will correct." Stettler *v.* O'Hara, 69 Ore. 519, 532, 1914.

[2] Chicago, Milwaukee & St. Paul Ry. Co. *v.* Minnesota, 134 U. S. 418, 1890.

But the economic theories of the Supreme Court go back to the business revolution of the seventeenth century. It was that revolution which, from the close of Elizabeth's reign to the Act of Settlement of 1700, displaced feudalism by capitalism. The dissenting opinions in the slaughterhouse cases went back to the time of Elizabeth, James, and Charles, where they discovered the precedents for their definitions of economic liberty. Justice Field cited the Case of Monopolies, decided in 1602,[1] where a grant by the Crown to a private citizen of the sole right to import, manufacture, and sell playing cards within the realm was declared void as against the common law and Acts of Parliament. Also, he cited the case of Davenant *v.* Hurdis, decided three years earlier,[2] in which a guild of merchant tailors, operating under a charter granted by the Crown, had attempted to restrict the trade of cloth-worker to members of the guild, but the by-law was declared void by the court. Likewise, the Statute of Monopolies, enacted in 1624, which declared void all grants of the Crown for "the sole buying, selling, making, working, or using of anything" within the realm, except patents for new inventions, for printing, and for the manufacture of certain implements of war.

Justice Bradley went back still further, to the year 1215, and claimed that the right to economic liberty was asserted in Magna Carta, where it was declared, "No freeman shall be taken, or imprisoned, or be disseized of his freehold, or liberties, or free customs, or be outlawed or exiled, or any otherwise destroyed, nor will we pass upon him nor condemn him, but by lawful judgment of his peers or by the law of the land." [3]

Historically, this reference to Magna Carta is now known to be incorrect.[4] The term "liberties," as used in that document, did not mean personal liberty nor economic liberty. Personal liberty was provided for under the other clause, "No freeman shall be taken or imprisoned." But the term "liberties" meant, in general, the feudal or other special privileges, immunities, jurisdictions, charters, or franchises, either granted directly by the Crown to the subject or claimed by prescription, which presupposed a grant. They were not different, so far as validity was concerned, from the grants of lands by the sovereign to his subjects. The King could sell privileges and franchises, just as he could sell or give away the land belonging to the Crown.[1] Each, when granted, became a recognized exercise of the King's prerogative in the hands of grantees. The grant of even monopolies of trade was one of these privileges or franchises, so that when the barons of 1215 claimed their "liberties" or a guild of 1599 claimed the right to make by-laws under its charter, or a grantee of the King in 1602 claimed the right to his monopoly, or when feudal lords claimed their lands, they were claiming their "liberties."

---

[1] 161 Wall. 102; Trin. 44 Eliz. (1602); 11 Coke's Repts. 84, 86.

[2] Trin. 41 Eliz., Moore (K.B.) 576 (1599); 72 Eng. Rep. 769.

[3] Magna Carta, Cap. 29, cited in 16 Wall. 114.

[4] W. S. McKechnie, *Magna Carta*, page 394 (1914). Also Shattuck, see page 170.

"Franchise and liberty," said Blackstone, "are used as synonymous terms, and their definition is a royal privilege, or branch of the King's prerogative, subsisting in the hand of a subject. Being therefore derived from the Crown, they must arise from the King's grant; or in some cases may be held by prescription, which presupposes a grant." Blackstone mentions franchises to hold criminal (leet) or civil court; to have a manor or lordship; to have waifs, wrecks, estrays, treasure-trove, royal fish, or things that had caused the death of a man (deodand); to have a fair, or a market, or the right of taking toll; to have a forest, chase, park, warren, or fishery, carrying the King's exclusive right to kill the game. "It is likewise a franchise, for a number of persons to be incorporated, and subsist as a body politic; with a power to maintain perpetual succession, and do other corporate acts." [2]

Thus "liberties" were royal privileges and powers, all of them monopolistic in character, subsisting in the hands of subjects, and the very different meaning of liberty as absence of monopoly came not from the prerogative, but from the common law.

The common law originated in the customs of "freemen," or rather privileged men, in that they enjoyed the privilege of bringing suit in the King's court and of appearing as witnesses and jurors in assisting the King's justices to decide suits with each other. This privilege attended them on account of their military services to the King and their holding of lands as tenants directly or indirectly of the King. The "freeman" was a "freeholder," while the "unfree" were the serfs or copyholders and even the merchants and manufacturers of the villages and towns, who afterwards obtained their "freedom" by way of charters granted to their guilds or corporations.

---

[1] W. S. Holdsworth, *A history of English law*, Vol. I, pages 169, 476 (3d ed., 1923).

[2] Blackstone, *Commentaries*, Sec. 37.

It was out of these customs of freeholders, sanctioned and enforced by the King's justices, that the institutions of property and liberty were fashioned. The process consisted simply in prohibiting private vengeance on account of murder, robbery, or theft, and requiring the plaintiffs and defendants to appear in court and to submit to the processes of court. It was the invention of writs requiring parties to attend the sessions of the court which "was really the making of the English common law."[1]

The King's objects were originally only to obtain revenue and to keep his subjects peaceful, and it was out of these public purposes that his justices, with the help of freeholders, developed the procedure of trials and the remedies on behalf of suitors that henceforth became the legal rights of persons, property, and liberty.

From the earliest times these justices and landlords established the common-law rule against restraint of trade on the part of the petty merchants and manufacturers who were "unfree" in the sense that they might not participate in the King's courts. As early as the year 1300, it is asserted, an unlearned local court imposed a fine on several candle-makers who "made a covenant among themselves that none should sell a pound of candles cheaper than another."[2] Thus liberty of trade among business men became the common-law rule of the landlords until modified, in the seventeenth century, by the business-law rule of "fair trade."

It was these common-law concepts of personal rights, property rights, and liberty that came into conflict, in the reigns of Elizabeth and the Stuart kings, with the prerogative of the monarch. The way was prepared for a double meaning of the word liberty. It might mean the "liberties" of Magna Carta, which were the privileges of landlords granted by the monarch, or it might mean the liberty to buy and sell, to be free from violence, theft, and trespass, derived from the approved customs which constituted the common law. The two were inconsistent. One was a contradiction of the other. Freedom, or liberty, in the sense of a grant out of the royal prerogative, stood for a relation of superior to inferior;

[1] Edward Jenks, *A short history of English law*, 45 (1912).

[2] F. Pollock, "The genius of the common law," 13 *Columbia Law Review*, 2–3 (1913).

freedom or liberty in the sense of the common law stood for a relation of equality between members of the same class. The first is more properly to be distinguished as "freedom," the second as "liberty." Freedom was a grant of power to participate in the privileges of those who were specially favored by a superior. Liberty was a common-law right to equality of treatment among individuals who belonged to the same class, whether privileged or unprivileged. Equal liberty was consistent with unequal freedom.

It was this contradiction and double meaning of liberty that characterized the long struggle of the seventeenth century until it was finally closed by the Act of Settlement in the year 1700. When, during the reign of Elizabeth, industry expanded into national markets, one out of the several prerogatives of the King, the exclusive privilege to a market, likewise expanded. At first it was used by Elizabeth to foster the development of mineral resources, new industries, new processes, and new materials or products, whether newly imported or newly invented. In this way it came to be extended to innumerable articles of merchandise and to sheer abuse by privileged favorites.[1] The political uprising on this account, which ended in the Commonwealth, is well known. On the legal side it was reflected in new definitions of monopoly and liberty, based on errors in interpreting the original meanings. These errors found their way into the cases of Davenant *v.* Hurdis and the Case of Monopolies at the close of Elizabeth's reign, as well as other cases in the reign of James I.[2] The historical error is attributed by McKechnie mainly to Coke, who, "following his vicious method of assuming the existence, in Magna Carta, of a warrant for every legal principle of his own day, misled generations of commentators."[3] Specifically, Coke, commenting on the term "liberties" (*De libertatibus*) as used in Magna Carta, declared that all monopolies were against the Great Charter, because "they are against the liberty and freedom of the subjects and against the law of the land." In this error, says McKechnie, Coke "has been assiduously followed."[4] The error, however, was made in a good cause, for, says McKechnie (page 133) "if the vague and inaccurate words of Coke have obscured the bearing of many chapters of Magna Carta and diffused false notions of the development of English law, the service these very errors have done to the cause of constitutional progress is measureless."

---

[1] W. Cunningham, *The growth of English industry and commerce*, Vol. I, pages 58, 75, 286 (1903). Justice Field's reference is at 16 Wall. 47.

[2] Tailors of Ipswich, 11 Coke, 53 (1615).

[3] McKechnie, *op. cit.*, page 385.

[4] *Op. cit.*, at page 384; Coke, *Second institute*, Sec. 47.

Thus the so-called "liberties" of Magna Carta on which the dissenting justices in the slaughter-house cases relied in order to attach the notion of liberty of choice to the definition of property were exactly the opposite of liberty and property, for they were not only *not* property rights but were a denial of rights of property and liberty in the hands of subjects other than those who held the original "liberties." The monopolies which came to the front with the expansion of industry in the time of Elizabeth were but what had been the unquestioned exercise of prerogative in granting to subjects the enjoyment of sovereign powers over other subjects. When, in Magna Carta, the barons claimed their "liberties," they were claiming personal privileges, or the right to exercise the powers of sovereignty. They were claiming, not liberty or property, but an advantageous position in government based on the personal relations of superior and inferior, of dominion and submission, which characterize the relation of sovereign power to privileged persons, and what Magna Carta asserted was that the barons should not be deprived by the King of these personal sovereign privileges. They were claims to the privileges of monopoly supported by the personal favor and superior power of the sovereign, and not claims to the equal liberty of all subjects to own and buy and sell property. In short, "liberty" meant, not liberty nor property, but political privilege.

The historical error of Coke in the definition of liberty was repeated by the minority justices in the slaughter-house cases, in interpreting the fourteenth amendment, and afterwards by all of the justices in the Allgeyer case. Meanwhile the Court, in the Munn case and the Minnesota rate case, had been changing also the definition of power from physical power to economic power. The Constitution of the United States as well as the fourteenth amendment, as contended by the majority in the slaughter-house cases, had been framed on the principles of common law, in which the term "property" signifies physical objects, whether chattels or lands, held by one citizen for his own use against other citizens, and the term "liberty" signified freedom from slavery, as against other persons.

At the same time, under American conditions, the ancient prerogative of the King had become the police power of the legislature. Afterwards, in the Munn case the majority changed the definition of power. The prerogative, that is, the police power, is the physical power of the sovereign over subject; whereas the kind of power recognized in the Munn case was the economic power of citizen over citizen. Here, again, the two meanings of power coalesce, just as the two meanings of liberty had coalesced; for a legal monopoly or franchise, based, as it is, on direct participation in the physical power of the sovereign preventing competition, is economically similar to the power of such private property as a grain elevator in Chicago, whose owners have power to charge for their services more than they cost, owing to superior location, but without legally preventing competition. In the one case competition is physically prevented; in the other case competition is economically prevented. In the one case the monopolist is favored by the sovereign as against the equal competitive liberty of others; in the other case the owner is favored by his economic situation while the sovereign treats his property and liberty equally with all others. Ultimately each, of course, rests upon the physical power of sovereignty to protect the holder of either the monopoly or the situation. But in the case of a legal monopoly the protection is the direct prohibition of competition, while in the case of a favorable situation the sovereign protects only the ownership of the situation. In either case, economic power emerges, since economic power is simply power to withhold from others what they need. In short, the change in the concept of property from physical things to the exchange-value of things is a change from a concept of *holding* things for one's own use to *withholding* things from others' use, protected, in either case by the physical power of the sovereign.

The transition from the notion of holding things for one's own use and enjoyment to the notion of economic power over others evidently accompanies the historical evolution of property from slavery, feudalism, colonialism, and a sparse population, to marketing, business, and the pressure of population on limited resources. Where production was isolated, or the owner held under his control all of the material things as well as the laborers necessary to the support of himself and dependents, the concept of exclusive holding for self was a workable definition of property. But when markets expanded, when laborers were emancipated, when people began to live by bargain and sale, when population increased and all resources became private property, then the power to *withhold* from others emerged gradually from that of exclusive *holding* for self as an economic attribute of property. The one is implied in the other, but is not unfolded until new conditions draw it out. Just as the scales of the reptile become the feathers of the bird when the environment moves from land to air, so exclusive *holding for self* becomes *withholding from others* when the environment moves from production to marketing. The transition was hardly noticeable as long as the merchant, the master, the laborer, were combined under small units of ownership, but becomes distinct when all opportunities are occupied and business is conducted by corporations on a credit system which consolidates property under the control of absentee owners. Then the power of property *per se*, distinguished from the power residing in personal faculties or special grants of sovereignty, comes into prominence. In the case of a sparse and isolated agricultural population and its accompanying handicraft stage of industry, represented by the butchers in the slaughter-house cases, the owner's manual, mental, and managerial faculties are inseparable from the operation of the physical plant. But in the corporations involved in the railroad and warehouse cases, the managers and the laborers are agents and employees of owners at a distance, and the property of the latter exerts its silent power of command and obedience by the mere resolutions of unseen boards of directors. When to this is added the pressure of population and the increasing demand for limited supplies of mineral and metal resources, of water powers, of lands situated at centers of population. then the mere holding of property becomes a power to withhold, far beyond that which either the laborer has over his labor or the investor has over his savings, and beyond anything known when this power was being perfected by the early common law or early business law. It becomes a power to extract things in exchange from other persons, in the absence of and wholly separate from individual human faculties — a power of property *per se*, silently operating but clearly seen and distinguishable from the manual, mental, and managerial abilities of its owners.

This power of property in itself, the power to withhold, seen in these extreme cases, is but an enlargement of that power which exists in all property as the source of value-in-exchange and which may be distinguished as *waiting-power*, the power to hold back until the opposite party consents to the bargain. While, *as investors*, they perform the indispensable service of waiting for compensation, yet *as bargainers* they determine through their power to wait what shall be the terms on which that compensation shall be made. Waiting-power emerges out of waiting-service when both the natural opportunities are occupied and the individual services of hundreds and thousands of investors are brought together in the collective power of corporations holding access to market opportunities.

The concept of the functioning of property correspondingly enlarges. The concept of exclusive holding for use and enjoyment of self is identical with that aspect of property which we have distinguished as "economy." It is the activity merely of proportioning, without expanding, one's possessions and powers so as to obtain the maximum net income from all. The legal concept of *holding* is the economic concept of *economy*. But this proportioning consists solely in determining the various directions in which actual power shall be exerted. Hence, when the expansion side of property emerges in an environment of buying and selling, then the legal concept of exclusive holding becomes also the economic concept of power through withholding from others. Holding is economy, withholding is economic power.

It is the slow unfolding of property from *holding* to *withholding* that prevents its significance from being observed at first. The minority justices in the slaughter-house cases added the notion of choice to the notion of holding physical things, but their idea of choice was evidently not that of choice between two degrees of power over other people but a *choice between physical things*. This kind of choosing is, however, in fact, a choice between degrees of power, but the object over which power is exercised is the forces of nature, not the will of other persons. Such a concept of power belongs properly enough to the physical sciences in their engineering aspects. Man conquers nature by overcoming her resistance, which as Adam Smith suggested, is a kind of exchange with nature. And in doing so he chooses what appears to be the line of least resistance, which is also the line of greatest power. This is true of physics, chemistry, biology, or even psychology, all of which are aids in overcoming resistance of things, of animals, and of human beings.

But in these cases the resistance is set up by objects which have no right to resist and no right to withhold their services in exchange. They have an ethical or legal *right* to withhold, a right protected, or believed to be protected, by a superior power, and the degree of power therefore is believed to be of consequence to that superior authority in determining what should be done in the matter. This feature was overlooked, or perhaps not called in question, at first, and therefore the definition of liberty of choice, or "liberty of contract," given by the minority in the slaughter-house cases and adopted afterwards by the majority, was left in the position of a kind of "natural right" to choose between different degrees of power over the forces of nature, or else of a merely passive choice between social opportunities offered, but without any exercise of power over the offerer. In this respect their idea of choosing belongs rather to the notion of "economy" than to that of "expansion." It is choice in the sense of a preference that concerns nobody else, not choice in the sense of power over others. The definition still lingers in the stage of engineering economy, or business economy, and has not advanced to that of political economy which was afterwards reached in the Munn case. In the latter case the power to withhold from others is deemed to be a coercive power to be restrained by the physical power of the sovereign. . . .

The economic conditions advance at different rates of speed in different fields, or are called to the attention of the court with different degrees of popular or influential support, as was the situation in the case of Munn *v.* Illinois, and the Minnesota rate case. In other fields they advance more slowly or are not so vigorously protested. There is one respect, however, that of the usury laws, in which the Acts of the legislature restraining economic power have not been questioned. These laws appear to be a deprivation of property and liberty in the same sense as various labor laws which have been declared unconstitutional. A reason for this distinction was given by Justice Field, in the Munn case, where he contended that the loaning of money at interest was a special privilege. Referring probably to the statute of 1545, which, although as a concession to prevailing prejudice it condemned exactions for the mere "use" of money, yet permitted payment of "interest" at a limited rate,[1] Justice Field had said in the Munn case, "The practice of regulating by legislation the interest receivable, for the use of money, when considered with reference to its origin, is only the assertion of a right of the government to control the extent to which a privilege granted by it may be exercised and enjoyed. By the ancient common law it was unlawful to take any money for the use of money. . . . Parliament interfered and made it lawful to take a limited amount of interest. It was not upon the theory that the legislature arbitrarily fix the compensation which one could receive for the use of property which, by the general law, was the subject of hire for compensation, that Parliament acted, but in order to confer a privilege which the common law denied.[1]

---

[1] W. Cunningham, *The growth of English industry and commerce*, page 153 (1903).

Thus even the legal justification of restraints on the rate of interest taken for money, where mere economic power stands out distinct from personal inequalities, is based, not on the sovereign's authority to restrain the power of property but on his authority to regulate a privilege granted out of the royal prerogative. To the medieval mind and the common law, property as such, the mere holding of lands and chattels, did not endow one with economic power. Such property was for use and enjoyment, and the power which owners possessed proceeded not from ownership but from superior personal station or the enjoyment of special privileges bestowed personally by rulers. The ownership of money, on the other hand, was the ownership of mere power, for money produced nothing, could not be consumed, and was used only to take advantage of the necessities of others. When, therefore, the privilege of charging interest on money was granted, it was a grant out of the physical power of the sovereign, overriding the common law from which the rights of property had been derived, and carried with it the sovereign's reservation of authority to determine the limit beyond which that grant of power should not be exercised. And Justice Field was historically correct in his contention that restraints on the rates of interest, based on a sovereign grant of power, afforded no precedent for restraints on the economic power of property.[2]

---

[1] 94 U. S. 113, 153, 1876.

[2] But see Learned Hand, "Due process of law and the eight-hour day," 21 *Harvard Law Review* 495, 505 note (1908); Pound, "Liberty of contract," 18 *Yale Law Journal* 454, 483 (1909), says the "obvious answer" to this contention of Justice Field is that "enforcing a promise not under seal is also a late, law-granted privilege." I have not

The Munn case was an innovation in that it recognized a source of power unknown to the common law and unrevealed until property assumed its modern dimensions. The Munn case decided that the power of property might be restrained in dealings with customers. It was not until the year 1898 that the highest court decided that the similar power of property in the transactions of employer and employee might also be restrained. In that year an Act of the legislature of Utah came before the Court limiting the hours of labor in underground mines to eight per day. Justice Brown, after reviewing the cases and disavowing any intention of criticizing those courts which had declared similar laws unconstitutional, went on to show that modern economic conditions had increased the power of property over employees, and that the courts had begun to notice it. They "had not failed to recognize the fact," he said, "that the law is a progressive science"; that the right of contract, only recently asserted in the Allgeyer case, was nevertheless subject to certain limitations which the state might impose under the police power; that this power had greatly expanded during the past century; that in its exercise a large discretion is necessarily vested in the legislature; and that "the legislature has also recognized the fact, which the experience of legislators in many states has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority. . . . The fact that both parties are of full age and competent to contract does not necessarily deprive the state of the power to interfere where the parties do not stand

---

been able to locate the statute here referred to, and Jenks (*History of English law*, 136) seems to trace the appearance of the law enforcing an unsealed promise to the common law without the aid of statute, except the mere procedural provision in Westminster the Second, 1285, which permitted enlargement of the common-law writs "in similar cases."

upon an equality, or where the public health demands that one party to the contract shall be protected against himself."[1]

This principle, limited in 1898 to the industries of mining and smelting, was extended in 1916 to apply to all manufacturing industries.[2] In 1917 the principle was still further extended to cover wages as well as hours of labor. This occurred, however, through the deadlock of an equally divided court, which therefore sustained a statute fixing the minimum wages for women. Since no opinion was given in the case, it may be inferred that the Court supported the Oregon court wherein it had declared, "Every argument put forward to sustain the maximum-hours law, or upon which it was established, applies equally in favor of the constitutionality of the minimum-wage law as also within the police power of the state and as a regulation tending to guard the public morals and the public health."[3]

The foregoing enables us to distinguish the three kinds of power above referred to, which are inseparable in fact but emerge with different degrees of prominence in different transactions. One is physical power, the power of violence, upon which the grants of special privilege by a sovereign to subjects are based and protected. This was the main type of power recognized during the period of feudalism.

Second, is economic power, a kind of power which could not emerge until physical power had been regulated by "due process of law," and thus the rights of property had been established by the business revolution that ended with the Act of Settlement, in 1700; and even then, not until modern economic conditions had revealed the power which property has by mere withholding from others what they need but which does not belong to them.

Third, is moral power, which, however, may be "immorally" used: the power of personal influence unaided by violence or economic power — a kind of power which emerges only when unequal physical and economic power are eliminated.

---

[1] Holden *v.* Hardy, 169 U. S. 366, 381, 392, 397, 1898. A different state of facts afterwards determined the veto of a ten-hour law for bakers. Lochner *v.* New York, 198 U. S. 45, 1905.

[2] Bunting *v.* Oregon, 243 U. S. 426, 1916.

[3] Stettler *v.* O'Hara, 69 Or. 519, 535 (1914); 243 U. S. 629, 1917. This opinion apparently has been reversed in 1923 in Adkins *v.* Children's Hospital, 261 U. S. 525, 1923.

It is the relative predominance of these three types of power that distinguishes the three great types of going concerns, namely, the state, based on the fear of physical power, or violence; the business, based on the fear of economic power, or poverty; and the great variety of modern cultural, religious, or moral concerns, based only on the fear of opinion unsupported by fear of violence or poverty.

XLVI. THE COMMON LAW OF TODAY

1. THE LAW'S UNCERTAINTY AND COMPLEXITY[1]

Report of the Committee on the Establishment of a Permanent Organization for the Improvement of the Law

Our law is expressed, changed, developed, and more or less adapted to our needs and sense of justice mainly by judicial decision and by statute.

Much of our law is not expressed in statutory form. Important parts of the law on almost all subjects and all, or nearly all, of the law on many subjects are expressed with binding authority only in the recorded decisions of the courts. When a case is presented to a court for decision, prior decisions in cases involving more or less similar questions are precedents from which rules for the guidance of the court may possibly be derived. A rule thus repeatedly recognized through its frequent application by the courts becomes a principle of the common law. The greater the number, variety, and importance of the transactions to which a principle applies, the more fundamental the principle.

The decisions of the courts as a source of law are not confined to subjects on which no legislative provision exists. It is true that a statute may so minutely describe all the situations to which it applies that the courts have no other duty in connection with its application than to ascertain the facts of the case alleged to come under its provisions. The great bulk of our statutory law, however, is not of this character. Practically all statutes relating to the substantive law contain one or more provisions sufficiently general to raise a doubt as to their proper application in some cases. Such a doubt can be resolved only by the decision of the courts. Many statutory provisions indeed are merely statements of more or less general principles of law, and the major part of the law pertaining to the subject with which such statutes deal consists of rules for the application of these principles developed by the courts by a process similar to that by which common-law principles are developed. These rules indeed form the common law pertaining to the statute.

---

[1] *Proceedings* of the American Law Institute, Vol. I, pages 66–87.

1. Lack of agreement on the fundamental principles of the common law. — The principles of the common law are developed by the slow process of judicial decision. The power that makes may modify, and hence the common law has a flexibility which the statute law does not possess. A court may always consider all the facts of a case with a view to recognizing in any one or more of them a just cause for an exception to a previously recognized principle. Some uncertainty in the ramifications of the common law is therefore inevitable. It would exist although there was general agreement on clearly expressed fundamental principles, but the possible uncertainty is increased because unfortunately no such general agreement exists. It is not the duty of our courts to set forth the principles of the common law in an orderly manner, or even to express or explain them, except in connection with the application of one or more of them to the decision of a particular case. To obtain even an approximation to such an agreement on fundamental principles these would have to be set forth by public authority or by an agency commanding the respect and attention of the courts. There is no such agency, and this lack of general agreement on fundamental principles is the most important cause of uncertainty in the law.

2. Lack of precision in the use of legal terms. — Certainty in the law presupposes clear thinking on the part of those whose duty it is to know and interpret it. No greater obstacle to clear thinking exists than lack of precision in the use of words.

The effect of loose legal terminology in increasing the law's uncertainty is obvious. The exact principle intended to be expressed by the judge in writing the opinion, by the legislature in adopting the statute, or by the law writer in compiling the treatise, may be misunderstood, and therefore misapplied by the judge who turns to the decision, the statute, or the treatise for guidance.

There is no inherent reason why the law, like any other applied science, should not designate by precise terms the things with which it constantly deals. This our law fails to do. Even educated lawyers use many elementary legal terms, such as "obligation," "debts," "right," with any one of several different meanings in indiscriminate and confusing manner.

- THE LAW
  - Substantive
    - Persons
      - Natural persons
      - Partnerships
      - Corporations
    - Property
      - Real
      - Personal
    - Contracts
      - Express
      - Implied
      - Quasi contracts
      - Bailments
    - Torts
      - Private wrongs
        - To persons
        - To property
    - Crimes
      - Public wrongs
    - Remedies
      - Process
      - Damages
  - Adjective
    - Evidence
    - Procedure
      - Criminal
      - Civil
        - Common law
        - Equity
        - Code practice

AN OUTLINE OF THE LAW

Either substantive or adjective law may be common law (that is, found in the reports of cases) or statutory law (that is, declared by legislative enactment). This outline was prepared by the Editors.

When this confusion of terminology is found in contracts, wills, statutes, and decisions, doubt and litigation inevitably follow.

The difficulty in obtaining an exact legal terminology is enhanced by two circumstances. First, the language of the law must not be too recondite for general understanding. A philosophical terminology, though exact, may be so difficult to learn or to understand or to apply as to be undesirable. Second, no violent change in methods of expression or terminology from those hitherto in use can be adopted. Old terms in statutes previously enacted, and in former decisions, control the existing law. The whole bench and bar still use those terms instinctively and as a matter of course. Changes can be made and must be made where exactness of expression imperatively requires them, but such changes must be gradual, and there is a limit beyond which they can never go lest the language of the law cease to be plain English.

3. Conflicting and badly drawn statutory provisions. — The lack of agreement on, or even clear statement of, the principles of the common law has its analogy in the field of statutory law in conflicting and badly drawn statutory provisions. The collateral effects of the specific provisions, a matter often wholly disregarded in the adoption of a statute, is frequently the source of much uncertainty and confusion. The question whether a prior statute is repealed may be left in doubt. Again, the possible application of the provisions of the statute to conditions wholly apart from those which gave rise to the demand for the legislation may be for years a prolific source of uncertainty. Thus, the fourteenth amendment to the Federal Constitution was adopted to protect the rights of the recently freed slaves, but the great volume of litigation resulting from the adoption of the amendment has been over matters having nothing to do with the rights of the negro.

Lack of clarity in the language used is, however, perhaps the cause of the major part of the uncertainty in our statutory law. The poor draftsmanship which mars many of our statutes is not the fault of members of our legislatures. It is principally due to the erroneous idea, until recently generally prevalent among the members of the legal profession, that any lawyer is competent to draft a statute. The art of good legislative drafting, like any other art, is mastered only by practice under the tutelage of experts.

4. Attempts to distinguish between cases where the facts present no distinction. — The instinct of the judge trained under our legal system to respect prior decisions sometimes produces unfortunate results. A case is decided. Another case arises not differing in any essential respect, but the court believes that application to it of the principle established in the first case would produce injustice. Confronted with such a situation, the court may refuse to follow the prior decision, but so far pay formal respect to it as to write an opinion in which the court, instead of frankly overruling the prior case, attempts to distinguish the two cases on account of some immaterial difference in their respective facts. The result is that we have no clear statement of any legal principle, the law on the subject being left confused and uncertain.

5. The great volume of recorded decisions. — If a judge in deciding a case were without the guidance of a statute, a legal treatise, or the precedent of the action taken by courts in similar cases, the law would be nothing more than the judge's unaided guess. Some guide other than the judge's sense of right or understanding of existing custom is essential to approximate any degree of certainty. The more complex the social and economic conditions, the more essential is some external authoritative record of what the law is. The existence of a record of prior cases, combined with the court's desire to follow precedent, is a factor making for the certainty of the law. Thus in England the law of real property as it existed in the seventeenth and eighteenth centuries had been brought, in spite of its intricate complexity, to a high degree of certainty by the slow process of adding precedent to precedent. Today with other subjects the same process is going on, but a force increasingly tending to prevent the process from giving us reasonable certainty in the law is the number of the recorded cases which may be cited as precedents.

The modern development of the system of publishing and reporting the decisions of courts and the opinions which support the decisions, combined with the increase in the number of jurisdictions, the creation of new courts in old jurisdictions, and the greater amount of business done today than formerly by the average appellate court, has created an enormous mass of recorded cases. A computation in 1917 showed 17,000 volumes of American reports and 7,000 volumes of British reports. Each year witnesses large additions to this mass of cases. During the year 1914–

1915 it was estimated that 175,000 pages of American reports and 5,000 pages of British reports had been published.

Furthermore to this monstrous and ever increasing record of judicial precedent is being added each year not only the record of the opinions of the chief law officers of each state on questions of public law, but also the decisions of public service commissions and other administrative boards. This was forcibly expressed by a distinguished Australian lawyer in a recent address before the New York Bar Association. In England in the old days such literature was a scanty rivulet. In England and her colonies it has swollen in modern times to a stately stream. But in America it has become a raging torrent fed by hundreds of tributaries.

Sir John Salmond here refers to the American authorities alone as a raging torrent, but the American lawyer cannot confine his search for authority as to what the law is to the decisions of American courts. English cases are frequently relied on by the appellate courts, and must therefore be searched by counsel. For example, in seven volumes reporting the decisions of the New York Court of Appeals between January, 1919, and October, 1921, the court cites 207 English cases as against 238 Massachusetts cases, 73 Illinois cases, and smaller numbers from other states.

It is of course impossible for any individual lawyer or judge to read, still less by any device to carry in his mind, one one-thousandth part of this mass of case law. The reports as a source of law must long ago have been abandoned or arbitrarily limited to a few hundred designated volumes were it not for the aid given by general digests, digests on particular subjects in the form of treatises, and legal enclyclopedias. With these aids, in which are cited all or nearly all of the cases, it is usually still possible to collect and to make some examination of the action taken by the American and English courts in cases whose essential facts present the legal question on which information is desired. The time and labor involved varies. Often, however, the very thoroughness of the work done by those engaged in the compilation of aids in the search for precedents multiplies the cases cited beyond the possibility of careful examination. Moreover, the greater the number of previous decisions, even in the jurisdiction where the case in question is pending, the greater the chance that all of them cannot be reconciled in principle; and in cases where there is no precedent precisely in point in that jurisdiction, and where, therefore, reliance must be placed on the decisions of the courts of other jurisdictions, the probable differences of decision are so great as to be notorious.

The net result, therefore, is that, though the doctrine of *stare decisis* is the foundation stone of such certainty as the common law has, yet their very number and still more their contrariety tend to destroy the value of the principle and to substitute uncertainty for certainty.

In view of the nature of the sources of the law it would be unreasonable to expect the records of any court, no matter how learned and able its judges, to show no inconsistency in the statement or application of legal principles. When a case arises, the facts of which are practically identical with those of a prior case, it is not difficult for the court to recognize that the legal principle governing the earlier should be applied in deciding the later case. The task of recognizing the identity of the principle governing the two cases is much more difficult when there are many striking though immaterial differences of fact between them. Yet lack of such recognition it sure to produce uncertainty. Indeed, variations in the statement and inconsistency in the application of legal principles cause greater uncertainty than a reversal of a prior decision or an express repudiation of a previously announced principle. When the Supreme Court finally decided the legal-tender cases, the country felt that the law was fixed; it is not so when there is inconsistency in the application of legal principles, or when cases are distinguished upon grounds which do not justify a distinction.

The amount of uncertainty in the law at any time, therefore, depends to no small extent on the legal learning and ability of the bench and bar. Our legal system probably throws a greater responsibility on the courts and practicing lawyers than any other. The common law is what the judges make it. They alone can give an authoritative interpretation of the statute law. Nevertheless, in the investigation of every legal question they are largely dependent upon the briefs and arguments of counsel. The community possesses a force tending towards the certainty of the law as well as its adaptation to the needs of life in proportion as our judges and lawyers have that grasp of legal principles which enables them to see the real issues presented by the facts of a case, and the skill to apply consistently the proper principles to its solution. Even well-drawn statutes require for their proper and consistent interpretation well-trained mental faculties, and often a knowledge of the history and development of the law on the subject to which the statutes relate. The defects also in our statutory law, to which reference has been made, make the task of statutory interpretation harder and increase the desirability of a well-trained bar and an experienced bench. Not a little of the existing uncertainty in the law is the price we are paying for low requirements of legal education preparatory to admission to the bar and for judges often elected for short terms and chosen for reasons unrelated to their legal capacity.

6. The number and nature of novel legal questions. — Our recent social and economic development has been of a character constantly to increase both the number and the difficulty of novel legal questions on which the community desires information. Thus the growth in the variety and in the relative and absolute amount of business carried on by private corporations has thrown on the courts in the past fifty years the task of developing, with occasional direction from legislative action, a large and important part of our commercial law.

The growing dependence of the individual on public service utilities is another noticeable change within the last half century. Those who live under urban or suburban conditions secure their local transportation, light, water, and to a great extent their heat, not by their own efforts or the efforts of those in their employ, but from public facilities owned and operated by public service companies or by the government. From similar sources all the inhabitants of the country secure their means of communication and transportation. These changes have brought with them many novel legal questions; while the endeavor to secure through public commissions adequate services at reasonable rates has given rise to other questions of constitutional and statutory interpretation. Efforts by combination to control production and prices have involved new questions in the law of fair trade and have also led to attempts on the part of the public to restore competitive conditions or through administrative action to control prices—attempts which are apparently destined in the immediate future to raise new, difficult, and most important legal questions. These things, the growth of trade unions and employers' associations, and the efforts on the part of the public to obtain relief from the unfortunate results of industrial conflict are but some manifestations of that readjustment of social and economic conditions now going forward which inevitably brings in its train, not only difficult problems which have to be decided by public discussion and political action, but also an increasing volume of important and difficult legal questions with which the courts in the administration of the law have to deal without the direct guidance of statutes or precedents.

While it is clear from the foregoing analysis that the evil of uncertainty in the law is not due to one but to many causes, these causes act on one another. Thus the lack of agreement on fundamental principles is greatly increased by the want of precision in the use of legal terms, by the bulk of our legal reports, and by the ignorance of judges and lawyers. Again, the degree of uncertainty due to novel cases is increased by confused and poorly drawn statutes and by lack of agreement on, or a knowledge of the fundamental principles of, the common law.

Causes of complexity

The statement that the law on any subject is complex may denote one of two things. It may mean that a number of rules of law apply to a given situation, or it may mean that in order to ascertain the law applicable thereto many elements of fact have to be considered.

When used in the first sense, the degree of complexity is determined by the number of legal regulations affecting the class of transactions under consideration. If the only rule of law relating to the care which a railway company should exercise towards a passenger is the rule of reasonable care under all the circumstances, the law of negligence, so far as it relates to common carriers and their duties to their passengers, in the first meaning of the term is not complex. If by statute or by court decisions a number of rules regarding the kind of rails, signals, cars, etc., which those operating a railroad should use attain the force of law, the law in this first meaning of the term has become more complex, because the rules of law affecting the carriage of passengers are more numerous.

In the second meaning of the term the degree of complexity in the law is measured by the number of questions of fact that must be taken into consideration. Thus, in the illustration just given, if the rule of reasonable care under all the circumstances is the only rule of law affecting the duties of a railroad company in carrying passengers, this branch of the law of negligence, though simple in the first meaning of the word complexity, may be very complex in the second; because to determine whether the company has used due care when a passenger has been injured, many things connected with the complicated physical process by which a modern train is operated may have to be taken into consideration.

At present the general tendency of the law of negligence is to become more complex, if complexity is measured by the number of rules applicable to the normal transaction. Take a person traveling on an urban trolley car. When this mode of conveyance was first established, the law in the first sense of the term was simple: The passenger could not recover for an accident caused by the negligence of the company if he himself was not at the time exercising due care to avoid injury. The test of this due care was the care required under all the circumstances of the particular case. These circumstances might be very numerous. Owing partly to the tendency of the courts to be governed by previous similar cases, and partly to the fact that certain acts, as getting off or on a moving car, are ordinarily dangerous, this general rule of law has been almost buried in many jurisdictions under numerous special rules as to the care which should be exercised by a person boarding, traveling on, and alighting from an urban trolley car. These rules are more than rebuttable presumptions that the person violating them is careless — they have become principles of law. Thus in the first sense of the term the law is becoming more complex. On the other hand when an accident occurs the application of the law to the situation tends to become comparatively simple. All the facts of the case need not be considered if the person harmed at the time of the accident was violating one of the rules of law conclusively prescribing the proper conduct under the circumstances.

Life is complex when it is full of situations in which many things have to be taken into consideration to determine conduct. Thus the life of the pioneer may be hard, but it is not complex. True, the physical factors which he must consider may narrow his actions to a struggle for existence, but they are not complicated, and the social factors, his business transactions, and his personal relations with others are few and simple.

Among the forces tending to increase the complexity of life are distinctions of legal status, inventions and discoveries, the growth of commerce, and the capacity to act in association with others. The development of the modern state has on the whole tended to decrease distinctions of legal status. The feudal system with its intricate provisions respecting the tenure of land has disappeared, as well as the special legal privileges of nobles and the special legal disabilities of Jews. The disabilities of married women have been more recently almost wholly removed. Life is, however, apparently becoming for the average person more complex, because the other forces referred to — inventions and discoveries, which increase man's power over nature, man's disposition to engage in commerce, and his capacity to associate himself with others to attain economic ends — are increasing the number and variety of situations in which many factors, physical and social, have to be taken into consideration to determine propriety of conduct.

The forces referred to as making for greater complications in the conditions of life also tend to increase the complexity of law. This is true whether we use the term "greater complexity of the law" as denoting an increase in the number of rules of law applicable to the transactions of man, or as denoting the necessity to take into consideration a greater number of factors in order to ascertain the law in a given situation. A nation engaged in commerce obviously enters into a greater number and variety of transactions than an agricultural people, not only because sales of existing goods are more numerous, but because methods of contracting for future supplies and of dealing by bills of lading and warehouse receipts with goods at a distance must be found. Elaborate machinery for credit and for security also forms a necessary part of commercial life.

The effect of inventions and discoveries may be illustrated by the consequences of the introduction of the automobile. The number of facts to be taken into consideration in determining what is due care in the use of the highways has been increased. This may increase either the number of the rules of law applicable to traveling on the highway, or the number of factors which must be taken into consideration to determine the legal responsibility for an accident. Indeed, both of these things have resulted from this new mode of travel. While the number of rules of law has increased, the number of facts which must be taken into consideration in the average accident in order to determine legal responsibility has also increased. From either point of view, therefore, the law has become more complicated.

A similar result follows an increase in the number of social relations involved in a business transaction. The employment of agents, the formation of partnerships, the carrying on of business by corporations which often have hundreds and sometimes thousands of stockholders, all increase not only the number of persons affected by the average business transaction but the number of groups of persons having distinct interests. The law must either take into consideration each new social relation as it arises, and by that fact become more complicated, or to the extent of its neglect fail as an instrument for the administration of justice. Thus the early English courts, by refusing to recognize any right in land except that of the person holding the formal or legal title, maintained the law in its simplicity at the expense of doing injustice to those for whom the owner of the legal title had agreed to hold. The establishment of the Court of Chancery was due to a desire to do justice in cases where the ordinary rules of the existing procedural and substantive law were deficient by reason of their universality. The system of equity which that court first developed has rarely tended to simplify the law, but it has tended to adapt the law to the needs of life.

Lack of systematic development of the law

The growth of the common law from precedents not infrequently results in illogical distinctions, sometimes due to failure to follow a sound principle, but more frequently to the adoption of a rule which violates general principles established in other cases. Thus it is universally recognized that unilateral contracts are as valid as bilateral. Any act or forbearance by one not bound so to act or forbear should be and generally is held a sufficient consideration for a promise made by one who requests the act or forbearance. Yet in several cases it has been held that there can be no valid unilateral contract with forbearance as the consideration. These cases cite and follow one another oblivious of the general principle.

An even more glaring illustration is afforded by a case in Massachusetts

— Malardy *v.* McHugh.[1] The court there, following earlier decisions, held the defendant not liable for fraudulent misrepresentation of the area of land sold where the boundaries of the tract were pointed out. The court expressly recognized that the representation was one of fact and that therefore it was within the general rule that false and fraudulent representations upon which a plaintiff has relied to his injury are actionable, yet because of the earlier decisions on identical particular facts it gave judgment for the defendant. Such following of an earlier decision on its precise facts in spite of a violation of principle in so doing may be justified where vested property interests have been acquired in reliance on the earlier decision; but in the illustrations given there can be no such defense. Every time one who has received requested forbearance in return for a promise is allowed to break his promise without liability, the result is nothing but injustice, and to recognize a vested right of persons who sell land in Massachusetts to lie about the area of the land if they point out the boundaries is almost grotesque.

The lack of systematic development of the law as a cause of its complexity applies to the statute as well as to the common law. While in practically all our states some portions both of the substantive and of the adjective law have been dealt with as a whole by statute, and while in a few states codes purporting to cover the whole law have been adopted, it is nevertheless true that American legislation ordinarily affects not the whole of the subject with which it deals but only some part of it. The result may be that rules of law which never rested on sound principles or which have become obsolete are wiped out, but on the other hand such statutes may and frequently do, like a wrongly decided case, induce unnecessary legal complications and establish illogical exceptions to sound legal principles.

The purpose of adjective law is to provide a method by which disputed legal rights may be determined and as determined enforced. The rules which make up the law of pleading have as their special end the presentation of the issues of law and fact to the trial court. The rules that relate to appeal not only have the similar object of a clear presentation of the issues of law, but also seek to discourage frivolous appeals and to expedite the business of the appellate court. A rule of procedure may fail to attain its object because it does not give adequate guidance. For instance, to substitute for the present rules of evidence the rule that any evidence could be admitted which had a connection, however remote, with the question at issue would so encumber the record with gossip and other hearsay that even an intelligent jury would tend to become confused. Again, the business of an appellate court could hardly be conducted if its only rule in regard to appeals was that they should be presented within a given time. Some regulations as to what should be set forth to indicate the issue on which the court is to pass are necessary.

---

[1] 202 Mass. 148, 1909.

Rules of procedure which thus fail because of lack of sufficient detailed regulation cannot be said to complicate the law, even though delay and confusion in its administration are the natural result. On the other hand, procedural provisions may fail because of over-elaboration of regulation. This is today the defect of many of the statutes governing procedure in more than one of our states. Such statutes which unnecessarily multiply distinctions complicate the law. They tend to turn its remedial processes into a game in which the correct handling of complicated rules becomes an end in itself.

One of the causes of this last defect is the conservatism of lawyers. This conservatism delayed for years conferring upon our courts equity jurisdiction, and even after the jurisdiction was conferred, prevented for a long time much practical use of its more mobile remedial processes. Today the same conservatism tends to raise objection to the abolition of rules of procedure, perhaps well adapted to earlier conditions, which no longer serve any useful purpose. Lawyers are not singular in exhibiting dislike to alter the tools of their trade. When one has learned how to do a thing with the expenditure of much time and labor, it is natural that he should not welcome the reformer who proposes to change the rules and indicates the uselessness of the intricate technical learning on which their application depends.

In view of this natural conservatism it is a matter of commendation that so much has been done in recent years by bar associations and committees to simplify procedure; for if the art of procedure is to be improved, it will be only by those who know the art.

The conservatism of the bar is not the only cause of the time now spent over procedural questions. State legislatures, instead of placing on the judges the responsibility of molding procedure so that certainty and celerity may mark the administration of justice, have largely contributed to the complexity of the adjective law by adopting elaborate procedural codes containing a multitude of minute regulations, and have shown an indisposition to allow courts full control of proceedings before them. Appropriate judicial procedure can be better determined by the judges who use and guide it than by legislative bodies, and tying the hands of judges by elaborate statutory rules complicates the law and often prevents just conclusions. Thus the statutory restrictions on the powers of a trial judge in charging a jury which prevail in a number of states can be productive only of evil. The Mississippi statute, for instance, which forbids the judge to "sum up or comment on the testimony, or charge the jury as to the weight of evidence" is scarcely calculated to simplify the law or to increase the probability that justice will be done.

Varying law in different jurisdictions

American law is made, expounded, and administered by forty-eight states and by the Federal government. Each state legislature and each state court of last resort is an independent source of law. A state legislature may be and often is influenced by a statute in force in another state relating to a subject on which legislation is desired, but it is not bound to follow all the provisions of the other statute or the exact wording in which any of the provisions which it does adopt is expressed. To a much greater extent, the courts in one state, in determining the law applicable to a case they are called on to decide, are influenced by the decisions of the courts of another state or of the Federal courts in similar cases; but as in the case of laws adopted by the legislatures of other states, the decisions of the courts of other states are persuasive, not binding.

In view of the fact that uniformity in the statutes and decisions of the several states is not compelled by constitutional mandate, it is perhaps a subject for remark that so much similarity exists. Nevertheless, the variations in the law are many. These variations are due to several distinct causes.

Although we are, in spite of our varied origin and the wide area of our continental domain, a wonderfully homogeneous people, many examples of variations in law due to differences in economic and social conditions might be mentioned. Thus the different social experiences and theories of the people of different states lead some to recognize many causes for divorce, others only one cause, and the state of South Carolina does not recognize any cause. Again, the mining laws of Pennsylvania are adapted to operations where shafts must be sunk, tunnels run, and roads blasted, but the laws of California must also provide for hydraulic mining.

While the great majority of our states originally derived their law from England, those sections of the country included in the Louisiana Purchase and the later acquisitions from Mexico derive some or, as in the case of the state of Louisiana, much of their private law from the civil law of Europe. Many of the resulting differences in law do not reflect existing or even past differences in economic or social conditions, but are merely the outcome of different theories of what the law ought to be. Thus there is not today and never was any difference between the economic and social conditions of England and France requiring in England but not in France a consideration to support a contract. This notable difference, like many others, has its origin in the far greater influence of the Roman law on the continent of Europe than in England. On the other hand many of the differences in the law of persons, such as that affecting the legal status of husband and wife, and their respective relations to each other's property, are due in part at least to past social differences between England and France. While these differences have largely disappeared, they still exist to some extent, because when once a social condition has been reflected in the formal rules of law, the law itself becomes a factor tending to perpetuate that social condition.

Many variations of the law in different jurisdictions are due merely to accident.

One state will adopt a novel statute, such as a Workmen's Compensation Act; similar legislation will be adopted in another state; and in time this type of legislation becomes general. The practical result of each state adopting its own statute is that two states rarely have identical statutes, while in many states the differences, though not perhaps radical, are numerous. The fact that under our system of state governments we are not obliged to adopt a novel experiment in statutory law in all parts of the country at one time may sometimes be an advantage when novel public administrative or social legislation is under public consideration. The state whose people are not averse to trying a new statutory provision becomes a laboratory in which the people of the other states can observe the practical effects of the various provisions of the statute. When, however, legislation of a given type on a specific subject has become general in all the states, and there is no necessity for varying provisions, merely accidental differences are always unfortunate.

2. THE AMERICAN LAW INSTITUTE AND ITS WORK [1]

By William Draper Lewis

Director of the Institute

Lawyers have for many years pointed out the shortcomings of legislators. They have charged them with passing too many laws. The alleged confused wording and resulting obscurity of our statutory law has been the theme of many addresses before bar associations. There is a considerable basis for these criticisms. A legislature is far from a perfect machine for lawmaking. Yet it is a significant fact that when, two years ago on the tenth of next May, there met in the rooms of the Association of the Bar of the City of New York some thirty leading members of our profession to ascertain what, if anything, could be done to make our law more certain and less complex, not the uncertainty and complexity of the law of the statutes, but the uncertainty and complexity of the common law — the law that has been made by the judicial process — was uppermost in their minds. It may be believed that this was not because those present at the meeting felt that the uncertainty and complexity of the common law is greater than that which exists in the statutory law, but rather that, as lawyers, they felt they might, by taking thought, prepare a plan to improve the common law, while the improvement of the statutory law must wait upon the will of Congress and the legislatures of forty-eight states. However this may be, the gentlemen who responded to the invitation to attend the meeting of May, 1922, before the year expired had signed a report which, after mentioning conflicting and badly drawn statutes as one of the causes of the uncertainty and complexity of our law, explicitly stated that the chief cause is the lack of any general agreement among lawyers concerning the principles of the common law.

---

[1] Revised and reprinted from an article appearing in the *Columbia Law Review* for June, 1924, pages 621–631.

The meeting on the tenth of May, 1922, which we may regard as the first formal step in the establishment of The American Law Institute, was itself the result of two things. One of these was the feeling, to which I have just in part referred, that the common law as expressed in the decisions of our courts was, because of the ever increasing multiplicity of recorded cases and the growing complexity of modern life, daily becoming more uncertain and confused; and the belief that if some plan should not be devised to counteract existing tendencies, we would soon reach a time when our system of expressing and developing law by judicial decision would cease to function. If this should happen we would be obliged to substitute for the common law a code, thereby making all our law statutory. The only alternative would be to abandon reliance on precedent and substitute for it the will of the individual judge.

The other thing that brought about the meeting was the belief entertained by those in touch with the work of the individual members of our law-school faculties that some agency should be established which could utilize effectively for the improvement of the law the results of their labors. Not only many members of the faculties of the schools belonging to the Association of American Law Schools, but many judges and also lawyers in practice, had had more or less vague ideas concerning the establishment of a juristic center which could at once act as a sort of clearing house for the comparison of legal ideas and command for its considered legal statements an attention and respect rightly greater than that commanded by the statements of any single legal scholar, no matter how eminent. While no definite plan had been formulated, the Association of American Law Schools had had for some time a Committee on the Establishment of a Juristic Center. At the meeting of the Association held in Chicago in December, 1921, this committee had been given authority to invite representatives of courts and bar associations to confer with it. The meeting of the Bar Association of the City of New York on May 10 was called by this committee under this authority.

When those invited to the meeting of May 10, 1922, met, they resolved themselves into a Committee on the Establishment of a Permanent Organization for the Improvement of the Law. With the subsequent addition of certain persons this committee formulated a Report. The Report is divided into two parts: one deals with the causes of the law's uncertainty and complexity; the other with recommendations for the establishment of The American Law Institute, the first and primary object of which would be the restatement of the law. This Report was submitted on February 23, 1923, to a meeting of some three hundred and fifty lawyers and judges specially invited to attend. In the best sense of the word "representative," it was perhaps the most representative gathering of our profession that had ever been held in the United States. The meeting established the Institute, and on April 17, 1923, the Carnegie Corporation gave the Institute $1,075,000, payable over a period of ten years, to enable it to carry on its work.

Two things ought next to be explained: first, what led the Committee on the Establishment of a Permanent Organization for the Improvement of the Law to recommend the establishment of the Institute to restate the law; and, second, exactly what the restatement of the law is.

As stated, one part of the Report on the recommendation of which the Institute was established deals with the causes of the law's uncertainty and complexity. It has been pointed out also that the Report regards as the chief cause of the existing uncertainty in our law the lack of any general agreement among lawyers concerning the principles of the common law. That there should be some uncertainty is most natural. The common law is the law made by judges as distinguished from the law made by legislators. As the Report points out:

> The power that makes may modify, and hence the common law has a flexibility which the statute law does not possess. A court may always consider all the facts of a case with a view to recognizing in any one or more of them a just cause for an exception to a previously recognized principle. Some uncertainty in the ramifications of the common law is therefore inevitable. It would exist although there was general agreement on clearly expressed fundamental principles, but the possible uncertainty is increased because unfortunately no such general agreement exists. It is not the duty of our courts to set forth the principles of the common law in an orderly manner, or even to express or explain them, except in connection with the application of one or more of them to the decision of a particular case.

Uncertainty in the law is a defect. Any considerable degree of it is a very serious defect. "The knowne certaintie of the law," said Lord Coke, "is the saftie of all." But, while admitting that uncertainty is an evil, those responsible for the Report were not anxious to attain certainty at the price of abolishing our common-law system of administering and developing law. They had no desire to substitute for the common law a code to which the legislature should give the rigidity of a statute.

The two great merits of the common law are its flexibility and its fullness. These features distinguish the common law from statute and code. Where the law has been made statutory and the statute covers the facts of a case presented to the court, the court has no discretion; the judges must apply the statute even though they feel that the rule of law stated in it as applied to the particular facts does a real injustice. Where, however, the same statement of law is the clearly defined principle of prior decisions, but has not been made part of the statutory law, if the members of the court feel that the application of that apparently well settled principle will produce injustice in a particular case, they frequently will announce a modification or exception to the universality of the principle; the modification or exception being based on those facts which made a real difference between the case before them and the ordinary case in which the rule of law as previously stated is applied.

The second feature of the common law is the fullness of detail in which, on examining the decisions of the court, it is possible to express the law. The Report points out that:

> The common-law student of foreign codes is impressed with the fact that the statements of law are for the most part expressed in such general terms that the court, in applying the principles without other control than the code, has a much wider discretion than the judges of our own courts, who are usually guided in the most minute details by former decisions in cases presenting almost every phase of the case before them. The difference between the position of the continental European court and that of the American court in determining a case is that the former is bound by every statement made in the code, but these statements are expressed in such general language that the court has wide discretion in their application; the American court, on the other hand, though always in the position of being able to change and modify the common law, practically, because of the detail in which the law is set forth in prior decisions and its respect for such precedent, has usually a far narrower field for the exercise of discretion.

Any attempt on the part of legislatures to embody all the principles of the common law in a statutory code would necessarily destroy either its flexibility or its fullness and perhaps both. If the principles expressed in the code were only general principles in the widest sense of the word "general," the law would be as uncertain after its adoption as it is now. The region of greatest uncertainty in our law is in the application of broad general principles. If, on the other hand, the statutory code should express the law in detail, the rigidity of the statute would inevitably result in much injustice; and this because it would be impossible to foresee all the exceptions which should be made to a rule of law. No matter how careful we might be, many cases would be sure to arise falling within the letter of the principle but nevertheless presenting unforeseen facts which would justify an exception.

While, therefore, for the reasons stated, those responsible for the Report on which the Institute is founded were unanimously opposed to a codification of the common law, nevertheless they had to face the fact, which our whole profession must face, that such codification would be inevitable unless something was found to check the chief defect of the common law's two most valuable qualities — the defect of uncertainty.

It was not hard to see what was needed to check the course of the law's uncertainty, when once analysis and investigation had shown its principal causes. These causes are (1) conflicting decisions among different jurisdictions, (2) conflicting decisions within particular jurisdictions, (3) attempts of courts to avoid expressly overruling a former decision by the device of creating distinctions between the case before them and former cases which have no basis in the facts of the cases, and above all (4) the fact that even what may be termed the "key words" of our legal terminology have no agreed exact meaning, now being used in one sense and and now in another.

This uncertainty would not be reduced by limiting the decisions which should be regarded as authority, or by reducing the officially reported cases to a few cases selected by the judges. It became obvious to those preparing the Report that what was needed was the establishment of an agency, which would command the respect and attention of the courts, the purpose of which would be to examine and set forth in an orderly manner the principles of law. Furthermore, it was manifest that an agency to command the respect and attention of the courts must be something more than a small group of learned persons publishing from time to time legal works. The agency would have to be organized by the leading representatives of the profession as a whole. This is why the committee drafting the Report did not itself form the agency although it had among its members judges and lawyers of national reputation and as its chairman the recognized leader of the American Bar, Elihu Root. Instead of the committee organizing the Institute, it called the meeting in Washington to consider the Report and its recommendations. It was those present at that meeting, representative of the legal profession in the best sense of that word, who formed and are today The American Law Institute, a body of some seven hundred members, each of whom has won for himself recognized professional standing.

The work of the Institute is to examine and set forth in an orderly manner the law, primarily the common law.

To thus describe the Restatement on which the Institute is engaged as an orderly statement of the law leaves something to be desired in the way of detail. What then is the form of the Restatement? A final positive answer to this question cannot be given until both the Council and also the Institute at a meeting of its members have approved and ordered finally issued as a publication of the Institute a Restatement of some one topic or part of a topic. I can, however, give the tentative answer now made by the legal staff of the Institute, that is, by those of us who are doing the preliminary work. We are proceeding on the assumption that the Restatement of the law of each topic, as the Law of Contracts, or Agency, or Torts, shall contain three divisions: Principles, Comment (or, as some prefer to call it, Exposition), and Illustrations. The Principles will be direct and positive statements of law. The law will be expressed in what we may call statutory rather than treatise form. Taken as a whole, the Principles will express the law in far greater fullness of detail than do the codes of continental Europe. This fullness of detail is in accordance with the recommendation of the Report which led to the foundation of the Institute, that "the principles of law should be set forth with a fullness made possible by the care with which the rules pertaining to the application of more general principles have been considered in the decisions of our courts."

A Principle in most cases will be followed by Comment. The primary object of the Comment is to make it possible to apply correctly the Principle. The Comment, therefore, will set forth in a non-argumentative manner the reason for the Principle and give explanatory rules for its application.

The Illustrations will be specific cases, real or supposititious, which illustrate the statements of law made in the Principle or the Comment.

The Restatement will be complete in itself. In order to understand the law and its application it will not be necessary to refer to some other work. Again, the Restatement will not contain any citation of authority and, though the law apart from the Restatement may be uncertain in view of the conflict or paucity of the decisions, the Restatement will not refer to any view opposing that made in the Restatement itself. In short, the Restatement will speak ex cathedra. Either the origin and personnel of the Institute and the care with which its work is done will justify this assumption of authority, or the Restatement will have no greater effect to modify the existing uncertainty of the law than would a series of learned legal works written by individual scholars.

The Restatement, however, will not be the only publication of the Institute. The Restatement of the law of each topic will be accompanied by a Treatise arranged in accordance with the arrangement of the sections in the Restatement. This Treatise will contain full citations of authorities, an analysis and discussion of the legal questions involved, a setting forth of the existing certainties and uncertainties of the law, and a justification of the statements of law made in the Restatement.

The legal staff of the Institute consists, besides the Director, of the Reporters and their Assistants and those who give the Reporters advisory aid. There is a Reporter for each topic. The Reporter is primarily responsible to the Council for the preparation of a draft of a Restatement and accompanying Treatise. Those invited to give advisory legal assistance, or, as we call them, "Advisers," are themselves experts in the subject in which the Reporter is engaged. Among the Advisers, law-school men naturally predominate because they are members of a class that have had the opportunity to make themselves masters of some one legal topic. Individual members of the Council of the Institute, though not formally called Advisers, act in that capacity; thus Judge Cardozo, Judge Burch, and Dean Hall of the Chicago Law School act as Advisers in Torts, and Mr. Morawetz will, it is hoped, act as an Adviser if the topic "Business Associations," which will include Corporations, is undertaken by the Institute. As distinguished from the Advisers, the Assistants, in most cases younger persons, are persons elected for definite periods. They work under the immediate supervision of the Reporter.

The work itself proceeds from conference to conference. The Reporter prepares a draft of sections of the Restatement covering a part of his topic. This draft, if it has passed beyond the stage of what may be described as a preliminary effort, is printed and sent to the Advisers and members of the Council. With the Restatement, the Reporter may and usually does furnish Briefs containing argumentative defenses of the statements made in the draft of the Restatement with citations of authorities, or the Brief may state and discuss questions of arrangement or terminology. The Briefs are printed and distributed in the same manner as the Restatements. A conference of the Advisers and Assistants, such members of the Council as care to attend, and the Director is then called. Before the conference the Advisers and the Director send in, if possible, written comments and suggestions; these are typewritten and distributed to the Reporter and the other Advisers. The result is that when the conference meets each member is familiar with the draft of the Restatement and there is intelligent criticism or suggestion on almost every section; indeed it would be more nearly correct to say on every sentence.

On June 1, 1923, the work on the Restatement was begun. Four persons, called "Reporters," who are primarily responsible for the production of drafts of the Restatement on different topics, were appointed: Samuel Williston, of Harvard, as Reporter for Contracts; Joseph H. Beale, of Harvard, as Reporter for Conflict of Laws (Austin W. Scott, of Harvard, acting as Associate Reporter for Conflict of Laws from June 1, 1925, until September, 1926); Floyd R. Mechem, of Chicago University, as Reporter for Agency, and Francis H. Bohlen, of the University of Pennsylvania, as Reporter for Torts. All of these, except Mr. Mechem, who began his work on November 1, 1923, started their work on June 1, 1923. Mr. Mechem died in November, 1928, and in December, 1928, Warren A. Seavey, of Harvard, was appointed Reporter in that subject. In addition to these subjects, the Director has been acting as Reporter for Business Associations, and on January 1, 1927, Harry A. Bigelow, of Chicago University, began work as Reporter for Property, and Austin W. Scott, of Harvard, began work as Reporter for Trusts.

The Institute is also doing an important piece of work in Criminal Procedure. Here the work necessarily takes the form of a statute. The plan follows a detailed recommendation upon the subject, submitted by a special committee in December, 1925. The committee was composed of the late Herbert S. Hadley, Henry L. Stimson, Judge Charles C. Nott, Jr., and William E. Mikell. William E. Mikell and Edwin R. Keedy, both of the University of Pennsylvania, were appointed Reporters, and the work has progressed steadily and satisfactorily. It is expected that the entire Code can be completed by June, 1930.

The Code should not be thought of as a single statute, but rather as a series of model statutes dealing with the different topics properly included under the term "Criminal Procedure." Defects in Criminal Procedure are not uniform throughout the several states. For instance, the outworn technicalities connected with indictment, while serious in one group of states, in another already have been largely rectified. It is therefore unlikely that any state, at least for some time after the final official publication of the Code, will desire to adopt it as a whole; it is much more likely that each state will be interested in those suggested reforms which attempt to remedy serious defects in its existing procedure. The immediate practical value of any one of the acts will, therefore, vary in the different states.

It is interesting to note, however, that although the parts of the Code which have been drafted are still in tentative form, chapters covering some phase of Criminal Procedure, like the indictment example already mentioned, have already been adopted, or recommended by local commissions for adoption, in several states.

The Institute has organized into working groups many of the most prominent legal scholars of America for the production of the Restatement. These groups have already done a great deal of the work necessary to complete the Restatement of the law. The following brief summary shows the magnitude of the accomplishments to date.

One volume of Contracts has been given to the profession in final form.

This comprises about half of the material to be covered in that subject. A considerable part of the remainder has been put into tentative form, for discussion by members of the Institute and interested lawyers. In Conflict of Laws, the work on the preparation of the tentative drafts has been nearly completed. Revision of the material already submitted in tentative form is in progress. When completed, the work in the entire subject will be presented to the Institute for approval.

In Torts, the tentative drafts have covered the law governing intentional injuries to the person and the defenses thereto. Professor Bohlen and his committee have worked for nearly two years in the law of Negligence and have a large quantity of material ready to present to the Institute at its next meeting.

In Agency more than half of the subject has already been presented in tentative form. The balance will be completed at an early date. The Director, in addition to his work in the administration of Institute affairs, has done a great deal of preliminary work in the law of Business Associations and has presented in tentative form a draft covering the subject of creation of shares. Trusts and Property have been more recently undertaken for restatement. Professor Bigelow and his associates in Property have a portion of their Restatement ready for consideration by the Institute; and Professor Scott is holding monthly meetings with his advisory group upon the material in Trusts. A preliminary draft of this entire subject has already been completed.

A notable accomplishment of the Institute is its great success in uniting, in the groups which are working upon the Restatement of the Law, the law teachers, the judges, and the lawyers in active practice. The result is that in each step in the development of the Restatement in a given subject there is found a most fortunate combination of scholarly learning and wide and varied practical experience.

This combination of scholarship and knowledge born of experience has been effected from the initial stages of the work in each subject. The initial preparation of a preliminary draft of a Restatement falls of necessity upon a law teacher. But from this point forward the development of the work is furthered by members of all these branches of the profession. To illustrate: At a recent conference in New York five state supreme court judges and five law teachers discussed problems of the law of Torts. The next week, two judges, three practicing lawyers, and four law teachers held a similar conference on a portion of a preliminary draft of Conflict of Laws. The drafting of the code of Criminal Procedure has had from the beginning the assistance of judges of long experience in criminal trials and practicing lawyers with extensive and varied practice in the criminal courts. These are typical of similar combinations in the preliminary work in the various subjects undertaken for restatement.

The same combination of varying interests and points of view is preserved in the further progress of the work toward completion. If the academic side is in numerical majority in the formulation of the preliminary drafts, the practitioner and the judge predominate in the Council of the Institute. Here the product of each committee is carefully studied and frequently altered before it goes on to the general membership of the Institute. In this membership the same representative character is preserved. Here too individuals from the schools, the bench, and the bar combine to make their contributions to the perfection of the Restatement, each from the point of view of his own training and experience.

The Institute is sincerely endeavoring to make its Restatements represent the consensus of intelligent legal opinion in the United States. The drafts of the Restatement in each subject are worked over many times, both for substance and for form. They must be made to state the law both accurately and clearly. The more lawyers who will give their time to study the material submitted as it appears from time to time in the tentative drafts, the better the finished product will be. Members of coöperating committees have been and are giving a great deal of valuable help in examining the material in the various subjects and making known their suggestions for improvement.

The principal difficulty which is being encountered does not lie in reaching an agreement as to what the law is, though, of course, there are differences of opinion. The chief difficulty is to analyze a subject and so clearly express the principle that the difficulties of its application may be reduced to a minimum. Another difficulty is that, even when experts in a topic meet and discuss it, they do not always at first use the legal words common to their subject in exactly the same sense. Take, for instance, the subject Domicil. The Conflict of Laws group has been struggling with the question whether the word "home" should be used to express that which must be acquired before a person can obtain a new domicil of choice, and if so how the word can be defined or described in order that in using it the law may be correctly expressed. Most of the members of the group have spent years in studying Conflict of Laws. They are familiar with all the leading cases. But it was months before they arrived at a point, if the point has been fully reached even yet, when each understood the sense in which the others were using the word, and they could begin a worth-while discussion on what the law is on several fundamental matters.

One may think an illustration has been taken from a topic admittedly more confused than perhaps any other in our law. This may be so, but it is doubtful if much of the law of Conflict of Laws is more confused than some of the law of Agency with its "constructive" and "implied" agencies; its "real" and "actual" authority; its "implied" authority; and the common use of the word "authority" itself in two totally different senses: one as the consent of the principal to the agent and the other as the power of the agent to effect a change in the legal relations of his principal and a third person. Neither, it may be pointed out, is the subject of Consideration in Contracts free from the things that make difficult a clear expression of the law, with its applications of the rule that a consideration must be a "benefit" to the promisor or a "detriment" to the promisee.

There is a common belief that if one knows what one wants to say he can say it in simple and clear English. This is true; but it is also true that no one in writing on law or any other social science knows what he wants to say until he has tried to say it in the simplest and most direct manner. If the Restatement of the law of a topic, when it appears, can be expressed in such clear language that the average member of the bar can understand it and apply it in all ordinary cases without any special mental effort, then the hours of labor and the very considerable sums of money which are not infrequently expended over the statement of law contained in a single section will be more than justified. It is anticipated, however, that the same "average member of the bar" referred to will not infrequently declare that all the Institute has published is nothing very extraordinary because "he knew that much law long ago."

It may be asked, "What assurance have we that the courts, in the absence of legislative sanction, will regard the Restatement as authority?" If by "assurance" is meant absolute assurance, the reply must be: "None whatever." The nature of the organization of the Institute and the character of its personnel, together with the interest which the leaders of the legal profession are taking in its work, will, of course, command for the publications of the Institute much more than the ordinary consideration given to new legal works. The Restatement, however, will not win its way merely because of the distinguished membership of the Law Institute. To succeed, the Restatement must be supremely well done. Those who are doing this work are no more anxious that its results should be accepted without question and investigation than we are to have the legislature adopt the Restatement as a code and thereby force its acceptance on the courts. The growth of new institutions by what we may term the educational process is necessarily slow. This is in keeping with the desire to test new things by practical experience — one of the best traits of our race. The habit, now centuries old, which leads the judge to regard prior decisions in analogous cases as authority was probably of slow growth; and yet the habit, standing the test of experience, became and remains firmly established, although there is not one word in our constitutions or statutes which obligates a judge to regard as authority the decisions in prior cases. Whether, on the appearance of the Restatement, there will immediately begin the development of a general recognition of its authority, no one with absolute certainty can foretell. I suggest, however, that we have every reason to believe that this will be the case, provided, of course, the Restatement justifies itself by clearly setting forth the law. At any rate, I, for one, having a deep-rooted conviction that our common-law system, as opposed to the statutory code, is worth preserving and can be preserved, believe that the great experiment on which the Institute is engaged is well worth trying.

3. THE EFFORT TO HARMONIZE LAWS IN THE UNITED STATES[1]

By William M. Hargest

President Judge, Dauphin County, Pennsylvania; Chairman, Executive Committee, National Conference of Commissioners on Uniform State Laws

There is a growing interest in the effort to harmonize the laws of the various states, and considerable discussion concerning uniformity reveals the fact that the subject is not as well understood as it might be among those who are not actively engaged in its promulgation. There are those who think that uniformity is the cure for many of our juridical ills; others believe that uniformity can be overdone. The principle of uniformity in laws is not new; it is as old as the nation. Alexander Hamilton first agitated it; he was the instigator of a movement which resulted in a convention, called in Annapolis, in 1786, to consider how far a uniform system in the commercial requirements of the colonies was necessary to the "common interest and to permanent harmony." The purpose of that convention was, of course, to devise some means for the regulation of trade, but ever since that time there has been a growing need for uniformity of law.

How our diversity of law arose

When our forefathers brought over the common law of England, there was little diversity of law or of legal principles. But it is not surprising that diversity developed. Geographic, economic, social, religious, and political conditions differed and continued to differ in the early stages of our colonies, states, and territories. In religion, Massachusetts was Puritan, Maryland Catholic; in business, some of the colonies were commercial, others agricultural; in the North the Negro was free, in the South he was a slave. Such differences naturally gave rise to a diversified jurisprudence. In the time of the stagecoach, states were very far apart, with infrequent communication and little commerce. These diversified conditions naturally found expression in the statute law and in the decisions of the courts in the early days. Diversity was not serious so long as there was little business; but with the coming of the railroads, the consequent development of the country, and the increase of commerce, this diversity began to present complex problems which became more intricate as the states were brought into closer business relations by rapid transit, the telegraph, and the telephone. As living conditions became more complicated, new laws were required and more decisions of courts ensued. Both the laws and the construction of them created diversity. Perhaps some diversity was justified, but much of it could have been prevented if there had been some concentrated movement to prevent it. While at one time living conditions in the various sections were different, it is not so today. Now the people of one state live very much the same as those of another. Maine and California are relatively closer and more alike today than Massachusetts and Maryland were a century and a half ago. Commerce has obliterated state laws. Eastern investors have found western outlets for their money, and there no longer remains any reason why a note or check given in one state and payable in another should not have the same rights and be subject to the same regulations in both.

---

[1] Reprinted from the *Annals* of the American Academy of Political and Social Science, Vol. XIX, pages 31–35.

Our political, social, commercial, and industrial relations are now becoming so similar that they do not demand different legal treatment. Would it not be better for us to have the same rights and the same redress for our wrongs? The remedy, then, is to make the laws uniform on subjects in which it is desirable to have uniformity.

The desire for uniformity

The desire for uniformity arises from two causes: (*a*) the tendency of democratic governments toward centralization, and (*b*) the demand for efficiency. De Tocqueville says:[1] "Democratic nations are more disposed to fall beneath the yoke of centralization." The tendency to national life, the growing consciousness of our American nationality, has prompted a desire for uniform justice in this country. Uniformity has been obtained, in part, through the national laws, but to obtain uniformity in this way requires a surrender of the rights of local government.

Because of the richness of our national resources and our prosperous commercial development, we have, perhaps, been too insistent in our demand for governmental efficiency, without any regard for the change that may be made in the fundamental principles and scheme of our government; too willing to sacrifice our ideals for the momentary advantage which we conceive such efficiency will bring. In big business, centralization of authority is regarded as making for efficiency. A great business organizer or executive may not have the best judgment as to the best governmental policies. The business of government is big business, but it is a business which is best conducted when every citizen takes an intensive interest in its outcome. There is great danger in bending every energy toward an efficient central government, thereby tending to violate the spirit of our institutions and lessen the interest in local self-government that every good citizen ought to have and foster. Have we not reached the danger point in the surrender of the powers of local self-government, and will not any further surrender tend to destroy our fundamental ideals and weaken our governmental system? We lessen the interest of the individual citizen in his government in the proportion that we remove it from him. We cannot turn all the wheels of our great governmental machinery from Washington. Our interests are too vast and complicated. Elihu Root once said:[1]

---

[1] *Democracy in America*, Chap. V, page 94.

> The ultimate object of all government is the home, the home where our people live and rear their children, with its individual independence, its freedom. . . . Do not let us in our anxiety for efficiency cast away, break down, reject, those limits which save to us the control of our homes, of our own domestic affairs, and of our local governments.

How can uniformity be obtained?

The remedy is not the surrender of more states' rights and police powers and the establishment of more bureaus and the concentration of more authority at Washington, but rather by uniform state enactments. Thus we preserve both our national and state ideals.

To attain that purpose the National Conference of Commissioners on Uniform State Laws was organized, in 1890, and some of our best legislation has resulted from its labors. This National Conference is a unique body. It is semiofficial in its nature and is composed of commissioners appointed by the governors of the various states. Though it has no official connection with the American Bar Association, it is intimately identified with that Association. It meets for a week immediately preceding the meeting of the Bar Association and at the same place. Men of outstanding ability devote their time and talents, without compensation, and sometimes attend the sessions at their own expense, in the interest of that great cause. The result of the work of the Conference has abundantly justified its existence. Its outstanding achievements have been in the domain of commercial law, and substantial progress toward uniformity has been made. The Uniform Negotiable Instruments Act has been adopted in every state and jurisdiction, fifty-two in all; the Uniform Warehouse Receipts Act, in forty-eight; the Uniform Sales Act, in twenty-eight; the Uniform Bills of Lading Act, in twenty-seven; and the Uniform Stock Transfer Act, in twenty-one.

---

[1] "Importance of seeking reform through state governments." Delivered at Tenth Annual Dinner of National Civic Federation, November 23, 1909.

In the lay mind, however, uniformity is invariably associated with the divorce problem. One of the first Acts to be recommended by the National Conference was a Uniform Divorce Act. It was not received with favor. It is apparent that the states are reluctant to change the grounds on which a divorce may be obtained. And, strange as it may seem, little progress has ever been made in the domain of any Social Welfare Acts, with the exception of the Uniform Desertion and Non-Support Act. The National Conference has proposed sixteen Commercial Acts, with two hundred and fifty-four enactments. It has promulgated eight Social Welfare Acts, with forty-one enactments, twenty-one of which were of the Desertion and Non-Support Act, leaving seven of such Acts with but twenty enactments. So that, notwithstanding what the people may think generally as to the necessity of uniform legislation in social relations, when uniform Acts on such subjects as marriage, divorce, marriage license, child labor, and vital statistics, have been prepared with great care and recommended to the states for adoption, little response has been found in the legislatures of the various states. But the National Conference of Commissioners on Uniform State Laws has persisted in its efforts to secure uniformity in social welfare. It now has a committee considering a revision of the Uniform Divorce Law in the hope that it may present a uniform law more acceptable to the several states.

The question of carrying firearms also illustrates the difficulties in the way of uniformity. An Act regulating the purchase and carrying of small firearms has been prepared by the National Conference. The eastern states, and particularly the police authorities of the larger cities, severely criticize the Act as not being in any sense sufficiently drastic, whereas the western states regard it as taking away liberties which they cherish, to such an extent that it called forth a veto message of ridicule from the governor of one of those states.

There is another hindrance to the cause of uniformity. States sometimes become wedded to their laws, and it requires strong reasons to change them. To illustrate: Many of the western states have been especially anxious for a uniform Act on the subject of real estate mortgages, and the National Association of Real Estate Boards has insistently urged the preparation of such a uniform law. After a number of years of work the National Conference of Commissioners has recommended such a statute, but there is no hope of attaining complete uniformity on this subject because many of the states are quite satisfied with their laws as they now stand. The same is true as to a uniform Incorporation Act which has just been promulgated after ten years' work. But these Acts are model laws for those states which may desire to change their statutes, and thus uniformity will be partially obtained.

It sometimes happens, also, that reforms in the law develop with such rapidity that diversity arises before a uniform law can be prepared. The statutes regulating workmen's compensation are illustrative of this. Not very long ago we knew nothing of workmen's compensation laws, yet when the principle involved commended itself to the people Acts were adopted in the various states with such rapidity that most of the states had passed such laws, with varying provisions, before the National Conference of Commissioners, working with the care and conservatism that are characteristic of it, could prepare and offer to the states a uniform law on that subject. Diversity in the Acts creating commissions for the regulation of public utilities arose in precisely the same way.

How can laws be kept uniform?

The courts of New York and Arkansas, on the one hand, and Missouri on the other, illustrate these two practices. After the Negotiable Instruments Act was passed in New York there were several decisions which failed to recognize the change made in the prior law of that state, but later the court there said that by the passage of the uniform Act the legislative intent was to harmonize the conflicting decisions of that state with other jurisdictions. In Arkansas the courts adopted the same attitude.

In Missouri, however, the supreme court, in three cases decided after the Uniform Negotiable Instruments Act was passed in that state, adhered to a prior decision of that court without even referring to that Act, notwithstanding the apparently plain language of the statute. So it is readily seen how the courts are often responsible for the failure to obtain uniformity even though the legislatures tried to secure it.

But the subject of uniformity in law still requires a vast amount of education among the people. In social welfare legislation such as divorce, desertion, and child labor, both the people and legislators must be brought to see that it is far better to attain uniformity than to adhere to the old law, however venerable it may be, and also to see that it is quite as undesirable to have many of our social relations as it is to have our commercial relations determined by state lines.

The present confusion in the law

A few short decades have made an enormous change. The library of the practicing lawyer runs into thousands of volumes; that of a local bar association may run into the tens of thousands. The reports of cases decided by the court of last resort in Illinois now number 325 volumes, Pennsylvania 288, New York 244, Massachusetts 255, Michigan 236. The last volume of the reports of the United States Supreme Court numbers 270. Decisions from the various appellate courts in this country whose opinions are printed now number about 30,000 a year. This does not mean that people in the United States start or try 30,000 lawsuits a year; it means that of the total tried there have been appeals, briefs, arguments, and decisions by higher courts in this tremendous number. A lawyer would not have time to go through the physical labor of reading all this mass of material as it appeared if he devoted all his working hours to the undertaking. Much less could he examine it critically to see what it was all about. Each year the volume increases.

But this mass of reported decisions cannot be disregarded by the lawyer. To advise a client of his rights or liabilities, he must know what courts have said in other cases where the facts were similar to those the client presents to him. To know what the courts have said, the lawyer must have access to the books in which the decisions of cases are reported. This expense of acquiring and keeping up the sets of reports is very great. Again, even with the help of indices and skillfully constructed digests, the time involved in looking up the law on a given point accumulates with startling rapidity. Yet the time must be devoted to the task; it is no longer safe to give a legal opinion, as in pioneer days, "by the grace of God and the light of pure reason." Furthermore, the lawyer's time must be paid for. He cannot do his work for nothing if he is to make a living. It is not only the large and important cases, either, that present hard problems; many small transactions bristle with legal difficulties covering a wide range.

The worst of it is that even when the lawyer has bought his large library of expensive law books, and spent many hours in looking up legal authorities on his client's problem, he may not be able to give advice with any feeling of certainty that the court in his own state will uphold him. Perhaps his question may never have come before the supreme court of his own state, but a dozen courts in neighboring states may have pronounced on it. Perhaps those courts have divided in their view as to the settlement of the question; a majority of them may have decided one way, but a respectable minority announced a different opinion and supported it by what seems to the lawyer many convincing reasons for the result. It may well be, as it is in many places in the law, that either rule would work well enough if the rule could be authoritatively settled. But in the meantime the lawyer can only give a guess as to what his own court will say, and neither he nor the client can know whether the guess is right until a long and expensive litigation is concluded. If what the client wants is guidance for future conduct, not help from a present predicament, his adviser must send him away empty-handed.

Because of our federal system of government in this country we have no one court which has authority to settle, once for all, the rule which shall stand as the law in all the states of the Union. The United States Supreme Court has final authority on matters involving the Constitution or laws of the United States, and the states must obey. It is the final arbiter in determining whether a state tax statute unlawfully burdens commerce among the states, or whether a man's life, liberty, or property has been taken from him by a state without due process of law. But our Federal Supreme Court has no authority to lay down a rule on general matters for the whole country which the states must follow. Such questions as the duty of the driver of an automobile to his gratuitously carried guest, how long an offer to sell certain goods remains open for acceptance, whether an agent has power to subject his employer to liability by signing a note, are not reviewable by Federal authority when once settled by the highest court of a state.

XLVII. THE LAW'S DELAYS

1. JUSTICE AND THE POOR[1]

By Reginald Heber Smith
Of the Boston Bar

Denial of justice through delay

Although the days of Jarndyce *v.* Jarndyce are over, the course of American justice still amply provides the opportunity for delay "which gives to monied might the means abundantly of wearying out the right." Delay is not entirely bad. In cases where it serves to cool hasty tempers and stay spiteful litigation it is desirable. But when it becomes so prolonged that the issue ceases to be that of the merits of the case and becomes one as to the respective length of the parties' pocketbooks, it is altogether intolerable.

This evil of delay is established and the injustice which it causes is universally recognized. It works to defeat justice in two ways: first, by making the time required to reduce a case to final judgment so long that persons, unable to wait, do not start the case at all but give it up; and second, by forcing unfair settlements and compromises on persons so situated, either before suit is brought or in discount of a verdict after trial in exchange for a waiver of appeal. In a wage claim, speed is the essence of justice, for the suit is brought to obtain the means of livelihood. A judgment years or even months later is little better than no judgment. In negotiations between counsel for the settlement of personal injury cases, it is customary to deduct something from the amount agreed on as fair damages on the theory that less is better now than more three years hence in the due course of the law. The evil tends to aggravate itself by encouraging parties without meritorious defenses to make a sham contest so that they may avail themselves of delay and perhaps beat down the claim against them. The natural delay of the system is thus increased by this artificial burden; it is like throwing sand in unoiled gears. .

---

[1] Carnegie Foundation for the Advancement of Teaching, 1924, pages 17–34, abridged.

Delays are mainly of two sorts: those encountered in getting a case, after its entry in court, actually heard and determined, and those occasioned by the taking of appeals on points of law to the highest courts. The following case illustrates the delays in securing a final judgment in Philadelphia before the creation of the municipal court in 1913, and is typical of a condition which has existed in every large city: A wage-earner had a claim for ten dollars, which represented a week's work. On January 19, 1911, the Legal Aid Society tried his case in the magistrate's court and secured judgment. On February 8, 1911, the defendant appealed to the court of common pleas, which gave him the right to have the entire case tried all over again. On March 11, 1911, the plaintiff's claim was filed in the court of common pleas and the case marked for the trial list. Owing to congested dockets the case did not actually appear on a trial list until February 7, 1912.

Here entered a rule of procedure which would be incredible if it did not exist. A case marked for trial Monday must be tried Monday or Tuesday or else go off the list entirely. That is, if any prior case or cases marked on Monday's calendar should occupy the time of the court during Monday and Tuesday, then all other cases assigned on that list are canceled and the parties must begin at the bottom again, re-marking the case for trial and awaiting the assignment. While this is going on in one session, another session of the same court may have no cases and so be obliged to suspend, for, under the legal procedure, it was forbidden to do the common-sense thing of transferring cases from a congested to an empty session of court.

The wage-earner's case, assigned for February 7, 1912, was not reached on that day or the next, and so went off the list. It was re-marked and assigned for April 3, 1912. Not being reached on April 3 or 4, it again went off and did not reappear until October 10, 1912. Fortunately, it was reached and tried on October 11, 1912, and judgment entered for the plaintiff. It took one year and nine months, and required eleven days in court for both attorney and client, to collect the original ten dollars.

In the criminal law, delays while awaiting trial are even more serious, for where the defendant is too poor to furnish bail, delay is equivalent to a sentence of imprisonment for poverty.

In appeals taken to the courts of last resort on points of law, a reasonable delay is to be expected. The right of appeal cannot be cut off, and a certain deliberation of the points raised is desirable. Such appeals are relatively few in number and are not objectionable. But when the highest courts get years behind in their cases, as has happened in California and New York, and parties appeal not to secure rights but to secure delay, to get the benefit of the old adage that "time fights for the defendant," with hopes that the opposing party will die, or run out of funds, or become discouraged and give up, then delay becomes an outrage.

The elimination of delay

The delays which mar the existing administration of justice originate in, and are made possible by, our faulty court organization and our "thoroughly antiquated civil and criminal procedure." With unification of court organization and simplification of procedure, unconscionable delay will be swept away.

The outlook for a speedy reformation is promising. Already great strides have been taken. On this score the public conscience is aroused. The elimination of intermediate appeals permitting two trials on the facts has accompanied the creation of modern municipal courts and has done away with one of the most flagrant abuses. The municipal courts, despite their vast number of cases, are keeping abreast of their dockets. The intelligent propaganda of the American Judicature Society is clearly pointing to the methods whereby judicial administration can be lifted out of the muddle into which it has fallen, and there is an increasing disposition on the part of the courts, the bar, and the legislatures to make the needed changes. With the passing of delay, one great cause of denial of justice to the poor will be at an end.

Tedious proceedings and long delays are not necessary. They are not inevitable or inherent in the nature of our judicial institutions. They can be abolished whenever we so will it.

Denial of justice through costs

That the present system of costs works daily to close the doors of the courts to the poor is proved by ample evidence. In Boston the Legal Aid Society has kept precise figures since April 1, 1916. During the seventeen months ending August 31, 1917, there were 551 cases which could not be settled out of court, which were meritorious and required court action; 386 were taken to court and won, 36 were taken and lost, and 129 could not be brought before the courts because of the client's inability to pay the costs. In other words, the fee required by the state caused a total failure of justice to twenty-three per cent of the persons who needed to invoke the aid of the machinery of justice.

How the existing system of costs literally forbids resort to the courts by the poor is illustrated by the laws requiring security for costs. A plaintiff must not only pay the costs for summons, service, entry, trial, judgment, and the like, but in addition he must, on motion, furnish a bond to guarantee that the defendant, if successful, shall not be out of pocket. In the Connecticut law, for example, the bond is in the sum of fifteen dollars in the city court of Hartford and seventy-five dollars in the superior court. The defendant may bring such a motion on the ground that the plaintiff is a poor person. The net result is that a poor person who is unable to give or secure such a bond may be thrown out of court altogether. In Campbell *v.* Chicago, etc., R. C., a defendant, moved that the plaintiff, a poor person, be required to furnish a bond. The judge continued the case for a week to give the plaintiff time to file such a bond and, on his inability to do so, dismissed his case. On appeal the court said:

> We have no statute which permits a person to sue *in forma pauperis*. It seems almost like a hardship that a poor person should not be able to litigate. But this is a matter for the legislature to regulate and not the justice.

Laws requiring security for costs, despite their patent harshness to the poor, have uniformly been upheld. In striking contrast are the early English decisions which, perceiving the injustice of a rule of exclusion, and without hiding behind the absence of a legislative mandate, gave to the common law the proceeding *in forma pauperis*. If, as excellent authority has stated, this was done as "an indulgence arising out of the humanity of the judges," what can be said for our nineteenth-century judges who, acting in a democratic country, were not even willing to follow the fair provisions of the common law?

The result is no different than it would be if our bills of rights read, "Every subject who can furnish a bond for fifteen or seventy-five dollars ought to obtain justice freely, competely and without delay; to all others the courts are closed." In a democratic government of laws, where the state exists to guarantee through its administration of justice the security of fundamental rights, it is a sad perversion for the state, by its law, to cut off any class of citizens from the protection of the courts. On the one hand, the state, through its criminal statutes respecting breach of the peace and larceny, forbids persons to redress their own wrongs or collect their debts by self-help and remits them to the courts; and on the other, it imposes conditions as to the use of the courts which the poor cannot satisfy.

An epoch-making decision by the supreme court of California, rendered in 1917, lends judicial sanction to the ideas expressed in this chapter. The case is striking. Jury fees in California are twenty-four dollars a day, to be paid in advance. A day laborer, the father of ten minor children all wholly dependent on him for support, desired to bring suit in the superior court for the wrongful killing of his daughter and claimed his right to a jury trial. He filed an affidavit that he did not have more than twenty-five dollars and asked leave to sue *in forma pauperis*. There is a local statute permitting such a proceeding before a justice of the peace, but none making provision for suits in the courts of record. The superior court refused the application.

The attorney for the San Francisco Legal Aid Society intervened and the case was appealed. The supreme court held that the *in forma pauperis* proceeding was a part of the English common law, which had become part of the American common law, and that the court had inherent power to grant leave to sue without costs so that justice might not be denied to the poor.

Costs have their place as a deterrent, but they should serve to discourage, not all litigation, but false litigation, specious pleas, vexatious proceedings taken for delay, and to insure prompt compliance with court orders.

Costs, like delay, present in the main no fundamental or inherent difficulty. A reduction of costs and provision for *in forma pauperis* proceedings can easily be effected. It is a question of the will to do it. The proposal for direct state aid as to the expenses which cannot be eliminated goes somewhat farther. It will depend very largely on the development of state controlled legal aid bureaus, for in nature and result the embarrassment caused by these unavoidable expenses of litigation is precisely like that caused by the necessity of retaining and paying an attorney.

Expense of counsel

The lawyer is indispensable to the conduct of proceedings before the courts, and yet the fees which he must charge for his services are more than millions of persons can pay. Simple as these propositions are, they are too often forgotten in the discussions concerning the administration of justice. The emphasis has been on simplification of procedure and reorganization of courts; but even the best procedure in the most orderly courts will require the presence of the trained advocate. When those highly desirable ends are accomplished, the problem of the attorney will still remain the great stumblingblock in the path toward freedom and equality of justice. The vast number of persons who are debarred from legal advice and the essential services of the lawyer in court, however, is not realized. It is possible to form an estimate of what this number must be. It is known that in 1913 the average wage of the clients of the Cincinnati Legal Aid Society was ten dollars per week, and that in the year 1916, out of 1,981 cases analyzed by the Legal Aid Society in Newark, 1,579, or 80 per cent of the applicants, earned less than twenty dollars each week. Part of the need for attorneys' services is undoubtedly artificial. There is no reason why a court summons should read, "We command you to appear before our Justices of the Municipal Court on Saturday the twenty-first day of December, A.D. 1930, at nine o'clock in the forenoon. Fail not of appearance at your peril." It is necessary to employ counsel to explain that the plain English words do not mean what they say, but in law mean that you are not required to appear before the court at all, but must file an answer with the clerk any time on Tuesday, December the twenty-fourth. A little modernizing will eliminate such purely parasitic services.

But with all reformation of procedure and reorganization of courts, the true and essential functions of the attorney will remain and the need for his services will, as to the vast proportion of advice work, consultation, negotiation, and litigation, be the same. This great underlying problem cannot be summarily disposed of or dismissed with few words. Various methods and agencies, both within and without the judicial system, have come into existence and are being utilized in the endeavor to remove this inequality and thereby to promote the ideal of freedom and equality of justice.

2. THE REFORM OF CIVIL PROCEDURE [1]

By Edson R. Sunderland
Professor of Law, University of Michigan

The administration of justice is the most fundamental need of society, because through it alone individuals are enabled to maintain stable relations with one another and with the state. It is necessarily the function of government which most intimately affects the lives of all the people and is most likely to serve as the test by which they measure governmental success or failure.

In view of the enormously important contribution which the successful administration of justice can make to the political security of the state, it is strange that more systematic and intelligent efforts have not been directed toward its attainment in this country. At one period in our history there was a vigorous movement for reform, which resulted in the enactment of the New York Code of Civil Procedure of 1848. This code swept over the newly organizing West, and is the basis for the practice in many states east of the Mississippi River and in practically every state west of it. But this reform wave immediately lost its vigor. The new code was accepted as the American idea and therefore the last word in procedure. It was never anything more than a timid variation from the ancient common-law procedure of England, and has probably resulted in very little real improvement in the administration of justice. Most of the worst features of common-law pleading were retained, and practically no new idea of first-rate importance, aside from the general plan of carrying a few principles of equity practice over into actions at law, can be found anywhere among its provisions. It is a hard and rigid system, imposed upon the courts by legislative mandate, leaving them little freedom of action.

It was doubtless due to the fact that the New York Code came into existence just at the time when the western country was being settled, and when the newly organized legislatures were looking for a quick and easy way to put a system of procedure upon their statute books, that it attained such wide popularity. It was simply copied, grammatical errors and all, by the infant commonwealths of the West, and it may be that ease of enactment was as strong a recommendation for it as the merits of its provisions.

---

[1] *Proceedings* of the Academy of Political Science, Vol. X, No. 3, 1923, pages 81–89.

It would be interesting to compute what it cost the people of New York to attempt to find out from their courts what the new code meant. More than one hundred and thirty volumes of New York practice reports have been published, containing about twenty thousand cases, and if each case represented an average total cost to the parties and the public of five hundred dollars the aggregate cost of these practice decisions would be ten million dollars. These collected cases do not, however, represent one-tenth, perhaps not one-fiftieth, of the litigation which the people of New York have been required to endure in their efforts to obtain a judicial interpretation of the Code of Civil Procedure.

Picking up at random the last volume of the reports of the Illinois supreme court, which administers common-law procedure, and comparing it with the last volume of the reports of the supreme court of Indiana, a neighboring state which has adopted the New York Code, it appears that the code provides between two and three times as much litigation over points of practice as the common law. More comprehensive comparisons would not show greatly different results. The conclusion is fairly justifiable that the one great contribution which this country has made to simplified procedure has not been a great success.

But the seriousness of the situation in the United States is due only partly to the enormous direct cost of litigating questions of practice — a complete economic loss without a single redeeming feature. A greater injury is suffered by those who are unable or unwilling to incur the expense of such litigation and to take the risk of having their cases go off on points of procedure without a fair decision on the merits, and who for that reason are substantially denied the protection of the laws. It was an old maxim of the common law that wherever there is a right there is a remedy. A truer statement would reverse the wording, for without a remedy no right has any value. As Lord Campbell is said to have once put it, "The due distribution of justice depends more upon the rules by which suits are conducted than on the perfection of the code by which rights are defined."

There is no difference in principle between a decision based upon a contest of procedural skill between two attorneys and a decision based upon a contest of strength between two armed champions. We smile when we are told that trial by battle, although actually obsolete, was a lawful method of trying cases in England until abrogated by Parliament only about a hundred years ago, and we marvel that a sensible nation should so long tolerate such an anomaly. But while in England trial by battle existed only in the musty pages of the law books, and was rediscovered there by accident, in the United States trial by battle flourishes throughout the length and breadth of the land, with the court rooms as the lists, the judges as the umpires, and the attorneys, armed with all the weapons of the legal armorer's cunning, as the resourceful champions of the parties. It is a system which is steadily destroying the confidence of the people in the public administration of justice.

The characteristic feature of American procedure has been its legislative origin. This was a wide departure from the traditions of the common law. It was the courts of England, not Parliament, which created the rules of English practice. They were the product of experience, and were slowly evolved as an expression of the best opinion of the leaders of the English judiciary. When, however, the framing of rules of practice becomes a matter of general legislation, and a body of men, largely unfamiliar with legal instrumentalities and methods, undertakes the highly technical task of specifying the details of legal proceedings, an inelastic and inadequate system is inevitable. And it is safe to say that if the American courts had not been able to resort to the rich storehouse of common-law procedure to aid the defects of our statutory codes of practice, a complete breakdown would have occurred.

Legislative codes of practice have the further fault of extreme rigidity. Most American procedure statutes have undergone little change in the passing years, and even the New York Code, that *monstrum horrendum*, as Mr. F. R. Coudert has called it,[1] which became so bulky and complicated as to be almost unworkable, was only an exaggerated instance of legislative tinkering with details, showing no fundamental change of principle or policy in three quarters of a century. Legislatures are timid about making important procedural changes, and fear to get beyond their depth in dealing with matters about which most of their members know little or nothing. Only at rare intervals, when long suffering from inadequate legal remedies has aroused the bar of a state to demand improvement, can reform be expected. Under normal conditions legislative control of legal procedure is sluggish, trivial, desultory and unprogressive.

---

[1] *Certainty and justice*, page 19. The New York Code was replaced in 1919 by the Civil Practice Act, which provided a union of law and equity actions. There has, however, been a regrettable tendency of lawyers and the courts to engraft habits acquired under the code to the new Act, which aimed at great simplicity. — The Editors.

Judicial regulation of legal practice, on the other hand, largely escapes the weakness of inferior technical quality. The courts constitute the judicial department of the state, and the judges who preside and the lawyers who practice in them are the selected group of trained men charged with responsibility for administering the law. They alone are experienced in the actual conduct of litigation, they alone understand the meaning and effect of the rules, they alone are adequately informed concerning their defects, the opportunities which they offer for error, and the practical possibilities of improvement. But will judicial regulation also be free from the other drawbacks of legislative control, namely, inadequacy of scope and the tendency to stagnate? A survey of the history of common-law procedure is not encouraging in either respect. The chief source of inadequacy was the fact that rules of practice developed only as a by-product of litigation. As cases arose the remedial problems which they presented were worked out in the course of their passage through the courts. Rules grew up at random as deductions from actual decisions and were limited to such fragmentary and casual points as happened to be involved in pending actions. There was no authorized method of generalizing the rules, and litigants were obliged to stumble about in the dark when no precedent could be found. And this feature produced another unfortunate result. The precedents, when once established, were treated as binding, so that although new points of practice might freely come up for determination, points once passed upon could not thereafter be changed. As the rules approached completeness in detail they became fixed in form and binding in effect, and the elasticity, which had made the common law so delicately responsive to current needs, largely vanished.

But the English genius for administration was equal to the situation created by the fossilization of common-law procedure. Instead of taking the regulation out of the control of the courts and thereby losing the benefit of professional skill and experience, England destroyed the intolerable system of procedural precedents by authorizing the courts to lay down in advance the rules by which they proposed to regulate civil procedure. It was a reform of the first magnitude and marked a new era in judicial development, definitely turning the emphasis from the past to the future. The fundamental question was no longer the static one of historical regularity, but the dynamic question of practical social advantage.

But another problem still remained. The power to regulate might be ample, the plan of regulation sufficiently broad in its scope, and the requisite technical skill available, but would there be sufficient driving force to make the regulation effective? Would it be necessary to provide machinery for keeping the regulators actively at work?

The absolute necessity of such machinery is well demonstrated by a bit of American judicial history. In 1850, before the enthusiasm for the New York Code had begun to sweep over the West, Michigan adopted a constitution which both authorized and required the supreme court, by general rules, to establish, modify, and amend the practice in such court and in the circuit courts, and to simplify the same. No greater opportunity for effective regulation by rules of court could be imagined. But it was eight years before the court promulgated the first set of rules. By 1896, a period of almost forty years, only ten new supreme court rules had been added. By that time a few progressive members of the State Bar Association became so much aroused over the deplorable condition of the practice that they prepared a complete new set of rules, entirely changing the practice, and this revision was adopted by the supreme court. For eighteen years these rules remained almost absolutely unchanged, when another vigorous demand by a Bar Association committee again resulted in presenting to the supreme court a new and complete revision, with many strikingly novel features, which the court again accepted almost exactly as it was submitted. Since 1915 the practice has again settled down to wait for another outbreak of reform when conditions shall have become so bad that they can no longer be endured. Since 1858 the supreme court, which was charged in such magnificently broad terms with the duty and privilege of controlling procedure by general rules, has initiated practically nothing for the improvement of legal practice. The state has been left to the mercy of the intermittent efforts of casual Bar Association groups, with occasional help from the legislature, of doubtful quality and value.

England made early provision for this necessary feature. At first, in 1873, when the new Judicature Act was passed, the power to initiate rules was placed in the entire court, but this was so obviously ineffective that in 1876 it was transferred to a Rule Committee of six judges. In 1894 the committee was changed to include three practicing lawyers and four judges, and it was changed again in 1899 to include two barristers, two solicitors, and four judges. Meetings of the full committee take place two or three times a year and informal discussions much oftener. Barristers, solicitors, law societies, public trustees, masters, and public-spirited laymen are encouraged to send in suggestions for improving the practice.

The wonderful success which has attended the English court-rule system has not been unobserved in the United States, and within a decade New Jersey has completely abandoned the common-law system of pleading and substituted in its place a counterpart of that employed in England.

But the last step in the complete development of a workable system of procedure control is yet to be taken in England and should be taken in the United States. This is the establishment of a ministry or department of justice with a responsible officer at its head. Every other civilized country of importance — even such British dominions as Canada and South Africa — has such a ministry, charged with responsibility for affairs of law and justice. The welfare of the state is so largely dependent upon the administration of justice, and this in turn is so complex and so constantly in need of the most skillful supervision in order to keep it in touch with social demands, that the importance of such a governmental agency is obvious.

Under such a department the entire court system could be organized on efficient lines, eliminating conflicting jurisdiction and the duplication of functions. Proper administrative control of dockets, sittings, transfer of causes, and assignment of judges could produce coöperative efficiency with infinite possibilities. A chief justice or presiding judge, with judicial duties of his own, can never successfully carry the administrative burden which a real department of justice involves. The head of such a department should be responsible to the public, not to fellow judges, for the proper conduct of the office. He should not be a member of the court but an outsider who can look at the affairs of the department objectively. The test of his success would be the quality of the results obtained, and the public would not be slow in calling his attention to needed improvement in the character of the service rendered. Under a responsible head the department of justice would be expected to render reports of its activities, and instead of the utterly demoralizing American system of allowing the courts to operate year after year with never an accounting, we should develop an intelligible system of judicial data and statistics by which their performance could be judged and through which improvements could be suggested and devised. A rule committee consisting of the responsible head of the department of justice and two judges and two lawyers nominated by him could make the administration of justice as efficient as the present administration of banking or insurance. Centralized responsibility placed in competent hands is the recognized political need of the time. Nowhere would it produce more far-reaching benefits than in the public administration of justice.

3. THE FEDERAL COURTS[1]

By Felix Frankfurter

Professor of Law, Harvard University Law School

The widespread dissatisfaction with the work of our courts is a healthy sign, provided we do not embrace surface remedies. Certainly our legal administration should be more economical, more expeditious, more reliable, more eagerly sought by suitors — in a word, it should be more civilized. The quality of justice in any society depends upon the qualities of its functionaries — that is, the bench and bar — the background of public opinion, the adaptation of procedure to diverse kinds of litigation, the organization of the courts, and the volume and nature of the business they have to discharge. These considerations apply to all courts. But, unlike most, the Federal courts also serve a political function. They are one of the vital means for achieving the adjustments upon which the success of the American Union depends. The distribution of judicial authority between state and Federal courts is one phase, and perhaps the most delicate, of the ever recurring problem of the distribution of power between the states and the nation. Wisdom in the distribution of this judicial power is thus important for the happy relations of the states to the nation. It is with some of these aspects of "the entire Federal machinery of justice" that I am here concerned.

---

[1] Reprinted by permission of the author and the publisher from an article in the *New Republic*, April 28, 1929.

These are historic issues. As soon as the national government was launched, a hundred and forty years ago, a debate over the rôle of the national courts in the new Union began. What should be the scope of their authority? What their relation to the state courts? No other people in the world has ever tried to administer a single system of courts over so vast an area as the United States. This geographical extent and the political significance of the Federal courts have confronted Congress, in providing for a Federal judiciary, with problems that trouble neither British Parliaments nor state legislatures. Parliament in dealing with the High Court of Justice, and legislatures in devising state judiciaries, are concerned only with the effective distribution of their internal judicial power — that is, the appropriate structure of their local courts and how they shall work. These are largely technical questions. So, also, it is for lawyers to decide how judicial authority should be distributed within the Federal system and what procedure is most apt for its business.

But in the series of judiciary acts, beginning with Senate Bill No. 1 of the very first session of the United States Senate, Congress has had to face a different and more perplexing problem peculiar to a federated nation. It presents conflicts full of political explosives. The issues involved are of the very stuff of American politics, to be settled or evaded by one generation only to reappear in the next, because the conditions of life underlying them change from generation to generation. The formulation of wise, practical conclusions here also demands legal skill of a high order. But the wise adjustments, or happy compromises, between local feeling and national interest, and a procedure for making these compromises effective, are delicate problems of statesmanship, and their solution ought both to enlist and satisfy public understanding.

To make the fullest use of our judicial resources, to simplify as much as possible the inevitable complexity of a system of courts spanning a continent, to secure a fair balance between the Federal system and state judiciaries, to maintain the authority of the Federal courts through the prestige of their judges, to relieve the Supreme Court from all obstructions to the performance of its duties as the ultimate tribunal in our federalism — these must be the aims of all legislation regulating the organization of the Federal courts.

For more than fifty years, there has been no organic reconsideration of the field of activity of the lower Federal courts. The division of labor between the Federal and state courts is subject to the shifting needs of time and circumstance. It is not likely that the wisdom of 1875 will prove to be the measure of wisdom for today. Within half a century, industry and finance have transformed American society; such changes can hardly be without relevance to the organization of the judicial system of the United States. The indispensability of the Federal courts to the maintenance of our Federal scheme may be taken as a political postulate. But details of jurisdiction are, after all, details. As such, they should be judged by their appropriateness to the needs and sentiments of the time. The Federal courts must especially be saved from too much responsibility, which may interfere with their peculiar Federal tasks. The competence of the courts — apart from the all-important capacities and character of the judges — depends on the volume and nature of litigation. But back of all litigation is the prolific energy of modern legislation. Just because our economic forces make so strongly for centralization, there are no more challenging problems of statesmanship than deciding what tasks the central government shall take over, and how it shall perform them.

That there are limitations, and serious ones, to the practical exercise of Federal authority needs no proof today. What conduct shall be regulated by law, and what shall be left to custom? What regulative authority shall be exercised by the central government, and what left to the states or to interstate adjustment? Shall national agencies alone enforce national laws, or shall the states share in this task, or shall the states enforce them alone? These are puzzles of American politics which involve the welfare of the Federal courts. They cannot be settled by formulas. Nor are they moral issues, like the right to worship according to one's conscience or freely to pursue scientific inquiry. We are here in the domain of administrative effectiveness — matters not of principle, but of expediency.

What powers shall be given to what courts, and how they are to be exercised, can be determined neither on a priori reasoning nor by unchanging political principles. Equally unsafe guides are the prepossessions of the familiar. A study of the laws governing the Federal courts since 1789 shows that policy has always determined when and how and to what extent judicial power shall be exercised. Not inherent reasons but practical justifications explain the past Judiciary Acts and must vindicate jurisdiction in the future. The difficulty of administering law over a continent, the dangers of parochial adjustments, the dependability of state courts, the convenience of suitors, shifting economic and political sentiments — such influences have affected the distribution of authority between the national and state courts. The present jurisdiction of the Federal courts cannot rely on tradition, for the distributions have always been temporary. The only enduring tradition has been that of timeliness.

A powerful judiciary implies a relatively small number of judges. The rewards of a distinction have in the past drawn to the lower Federal bench lawyers of distinction, and therefore built up a public confidence like the feeling of the Englishmen for their judges. There are many signs that an enlargement of the Federal judiciary does not make for the maintenance of its great traditions. In 1884, there were only sixty-six Federal judges; by 1907, they had increased to one hundred and fifteen; there are now about one hundred and ninety; the pressure for more is steady. It is useless to try to increase the number of judges in proportion to the increase in the wealth or population of the country; for questions of psychology and prestige play havoc with the mechanical notion that more business in the Federal courts can be met merely by making more judges.

Some business should be stopped at its legislative source. Almost every interest of the country is against Federal legislation in the abstract, but ready to invoke such legislation for its own protection. Every new Federal offense means a new burden upon the Federal courts. Criminal cases involve a particularly heavy drain on the courts' time and, as a rule, they are the least attractive to those most qualified for the bench. Proposals to add to the Federal penal code should therefore be rigorously scrutinized. Federal power should not be abused by exerting it for the punishment of the essentially local crimes. Federal courts throughout the country, and particularly in centers like New York, are occupied in trials, frequently lasting weeks, for prosecution of what are essentially local frauds, brought to the Federal courts on the slim thread, perhaps, of a single use of the mails. It is true that frauds are thus punished, but at the sacrifice of interests more peculiarly in the keeping of the courts. The question is not whether certain acts should be outlawed, but what tribunal shall deal with violations. Penal laws against drug addicts, interstate automobile thefts, proposals to deal with "fences," all are attempted short cuts in the prevention and punishment of crime. I am not forgetting the difficulties of American criminal justice due to state boundaries; but the resources of the states and of the interstate coöperation have hardly begun to be tapped. These resources should be explored to the full, instead of burdening the Federal courts with state tasks.

Expansion of the rôle of our state courts

But even with Federal offenses, the pressure upon the Federal courts may be partly relieved by a freer use of state courts. There is historic warrant for allowing states to share with the Federal government in the administration of its criminal law. Not only will this relieve the Federal courts; it will help enlist local sentiment in support of national legislation, and thus save the Federal criminal law from being weakened by asserting the distant authority of a centralized government.

Congress has already greatly relieved the dockets of the Federal courts by turning over to the state courts the prolific litigation arising under the Federal Employers' Liability and the Jones (Merchant Marine) Acts, and preventing their removal to the Federal courts. This is a type of practical devolution of the central authority, which eases the Federal machinery. Jurisdiction should thus be given to the state courts, whenever Federal rights arise out of transactions that are essentially local and lend themselves to remedies in the state courts. The national interest in the uniform interpretation of a Federal law is protected by the reviewing power of the Supreme Court.

The states, in turn, could save for their own courts litigation which now heavily burdens the Federal courts. Modern business regulation and taxation give rise to the most perplexing cases. These controversies turn largely on voluminous facts, whose significance depends on social and economic policies. Suits to restrain such state action probably make up the most contentious phase of the work of the Federal courts, often engendering strong feeling and becoming the stuff of politics.

The Federal courts entertain jurisdiction in these suits because the states do not provide adequate remedies through their own courts. The legal procedure of the states has not accommodated itself sufficiently to the consequences of their regulatory legislation, so that the validity of new legislation, or the application of old, cannot be questioned in the state courts without running serious risks. The states could prevent interference with their tax collections through suits in the Federal courts, by removing any chance for the claim that there is no adequate remedy at law in the state courts, if the tax is paid. So, also, with appropriate changes in the criminal administration of the states, there would be no excuse for seeking injunctions in the Federal courts, or claims that the multiplicity of suits causes irreparable damages and oppressive penalties before final settlement, in the state courts, of the validity of contested state action. Congress has already given the states a lead in this direction, but they have not followed it. The states' failure to use their power to sift state legislation in their own courts has needlessly swollen the business of the Federal courts, and cast upon the Supreme Court some of its most burdensome labor.

Diverse citizenship litigation

Thus far I have been considering the rôle state courts may play in the disposition of Federal rights. What of the opposite — state ligitation in the Federal courts? The availability of Federal courts in matters outside the domain of Federal power and exclusively within state authority is the basis for the so-called diverse-citizenship jurisdiction of the Federal courts. Its purpose was to assure non-resident litigants of a hearing free from local bias. According to Marshall, the Constitution entertained "apprehensions" that distant suitors might be subjected to local bias in state courts, or, at least, it viewed with "indulgence" "the possible fears and apprehensions of such suitors." Whatever may have been true in the earlier days of the Union, when men felt the strong local patriotism of the new "sovereign states," has not the time come to reconsider how justifiable these apprehensions are today? The Civil War, the Spanish War, and the World War have altered national feeling, and the mobility of modern life has weakened state attachments. Local prejudice has far less to thrive on now than when Congress first conferred diversity jurisdiction on the Federal courts. But it is urged that eastern investments in the West and South are exposed in state tribunals to the risk of unfairness towards non-resident capital. This is an old claim and it was, no doubt, relevant when the relations between the East and the West were not what they are today. But the traditional argument ignores our economic transformation. The diffusion of securities throughout the country, customer ownership of utility stock, and employee holdings in large corporations, are new facts of such importance that we are told they constitute "an economic revolution." There has been a great increase in the financing of western and southern developments by local capital. Some utilities themselves dispose of their securities; bond houses now distribute large issues in these sections; a number of important eastern investment bankers have western and southern branches; local stock exchanges have been established, dealing mainly with local securities. These are changes that affect men's minds and they transform the sentiment of the community. They determine the attitude of jurors. Such considerations rule out the notion that, in the West and South, state jurors and judges are economic Ishmaelites.

Madison believed that Congress would return to the state courts judicial power entrusted to the Federal courts, "when they find the tribunals of the states established on a good footing." A nation-wide effort is now afoot to raise the standards of the bar, to modernize procedure, and to organize the judiciary. University law schools, bar associations, judicial councils, the American Law Institute, are all aiming at improvement in the administration of law. Can the state tribunals not yet be trusted to give justice to non-resident litigants? Or, in any case, is it wise to deprive the impulses towards reform in state tribunals of influential litigants who, in diversity litigation, now avoid state courts? Such litigants and their counsel ought to have every incentive to make state tribunals worthy, and their administration fair and impartial. Moreover, it is unwise politically to let the Federal courts be used as an escape from state tribunals, thus stamping the Federal courts, in the public mind, as the resort of powerful litigants. Congress has shown its confidence in state courts to handle actions in which juries are likely to be specially biased against corporate defendants, by prohibiting removal to the Federal courts in Federal employers' liability cases. A practice of eighteen years has vindicated this confidence. Is it not time now to reëxamine the jurisdiction of the Federal courts in cases where there is not the excuse of enforcing a Federal right?

Certainly the obvious abuses of diversity jurisdiction should be removed on plain grounds of policy, and to relieve the overburdened Federal dockets. Lacking an adequate system of Federal judicial statistics, we cannot make an exact analysis of the scope and nature of Federal court business. But it is common knowledge that the diversity cases represent one of its heaviest items. According to the usual estimate, they constitute one-third of the business of the district courts. An examination of ten recent volumes of the *Federal Reporter* shows that out of 3,618 full opinions, 959, or 27 per cent, were written in cases arising solely out of diversity of citizenship. In 716 of the latter, or 80 per cent, a corporation was a party. Corporate litigation, then, is the key to diversity problems. For legal metaphysics about corporate "citizenship" has hatched a brood of incoherent legal fictions about the status of a corporation, defeated the domestic policies of states, and encumbered the Federal courts with controversies which, in any fair distribution of political power between the central government and the states, do not belong in the national courts.

The various types of diversity litigation call for comprehensive scrutiny in the light of present-day conditions and the demands upon Federal courts by truly Federal litigation. Whatever is to remain of diversity jurisdiction, the law to be administered by the Federal courts is in theory the law of the states. But not so in practice. This is due to an early misconception by the Supreme Court, as Charles Warren has shown, of the purposes of the framers of the First Judiciary Act. As a result, the fortuitous circumstances of residence of one of the parties at the time of suit determine what rule is to prevail in a particular litigation. Needless to say, such residence is frequently a designed circumstance. The operation of a double system of conflicting laws in the same state is plainly hostile to the reign of law. Janus was not a god of justice. Litigation in the Federal courts is apt to be more expensive, and otherwise more burdensome, than in the state courts. Whenever the state law is authoritatively declared by the state, either through legislation or through adjudication, state laws ought to govern in state litigation, whether the forum of application is the state or the Federal court.

This indicates only a few of the many problems that will have to be explored if there is to be a critical inquiry into the work of the Federal courts. Plainly enough, these are not dramatic issues; they do not lend themselves to streamer headlines. But with a sure instinct for the relevant, President Hoover put the problem of law enforcement at the very forefront of our national concern. The seemingly technical issues outlined here touch the sensory nerves of effective law enforcement through the Federal courts. For, whatever our preferences, the interdependence of modern society is bound to throw increasing burdens of litigation upon the Federal courts. The scope of Federal authority has steadily extended during the past twenty years. Circumstances have been more compelling than differences in the temperaments of our Presidents or the prevailing temper of Congress. Whether national responsibility or states' rights were the accent in speech, the administrations of Roosevelt, Taft, Wilson, Harding, and Coolidge alike, have contributed to the growth of Federal authority. This has had its reflex in Federal litigation. The process will not stop. Future controversies in the Federal courts, perhaps even more than in the past, will demand discernment, mastery of facts, and insight into the ways of government. Men who inspire the widest confidence, cultivated and highly trained lawyers, with a touch of statesmanship, should be drawn into the service of the Federal bench. That they may discharge their great functions, the Federal courts should be given only such powers as are appropriate to a national judiciary under a Federal system, so limited as to be capable of disposition by a relatively small number of distinguished judges.

4. INCREASING THE POWER OF THE JUDGE OVER THE PROGRESS OF THE TRIAL[1]

By William Howard Taft

Chief Justice, United States Supreme Court

A perfectly possible and important improvement in the practice in the Federal courts ought to have been made long ago. It is the abolition of two separate courts, one of equity and one of law, in the consideration of civil cases.. It has been preserved in the Federal court, doubtless out of respect for the phrase "cases in law and equity" used in the description of the judicial power granted to the Federal government in the Constitution of the United States. Many state courts years ago abolished the distinction and properly brought all litigation in their courts into one form of civil action. No right of a litigant to a trial by jury on any issue upon which he was entitled to the right of trial by jury at common law need be abolished by the change. This is shown by the everyday practice in any state court that has a code of civil procedure. The same thing is true with reference to the many forms of equitable relief which were introduced by the Chancellor to avoid the inelasticity, the rigidity, inadequacy, and injustice of common-law rules and remedies. The intervention of a proceeding in equity to stay proceedings at common law and transfer the issues of a case to a hearing before the Chancellor was effective to prevent a jury trial at common law long before our Constitution, and would not be any more so under a procedure in which the two systems of courts were abolished. Already under the Federal code there is a statutory provision which has not yet been much considered by the courts, by which an equitable defense may be pleaded to a suit at law. If we may go so far, it is a little difficult to see why the distinction between the two courts may not be wholly abolished, and the constitutional right of trial by jury retained unaffected.

If the separation of equity and law for the purpose of administration is to be abolished in the Federal system, and they are to be worked out together in the same tribunal, then a new procedure must be adopted. Who shall frame it? Shall Congress do it or merely authorize it to be done by rules of court? Congress from the beginning of the government has committed to the Supreme Court the duty and power to make the rules in equity, the rules in admiralty, and the rules in bankruptcy. Moreover, the American Bar Association has for some years been pressing upon Congress the delegation of power to the Supreme Court to regulate by rule the procedure in suits at law. There would seem to be no reason why, where the more difficult work of uniting legal and equitable remedies in one procedure is to be done, the Supreme Court, or at least a committee of Federal judges, should not be authorized and directed to do it. Of course, the present statutes governing a separate administration of law and equity must be amended or revised by Congress and certain general requirements be declared, but the main task of reconciling the two forms of procedure can be best effected by rules of court.

---

[1] Reprinted by permission from "Possible and needed reforms in the administration of justice in the Federal courts," *American Bar Association Journal*, 1923.

The same problem arose in the courts of England and has been most successfully solved. By the Judicature Act of 1873, Parliament vested in one tribunal, the Supreme Court of Judicature, the administration of law and equity in every cause coming before it. This court was made up of the Court of Appeal and of the High Court of Justice. By subsequent Acts the divisions of the High Court were reduced to three: (1) the King's Bench, (2) Equity, and (3) Probate, Divorce, and Admiralty, as they now are. They are all merely parts of the same High Court, but for convenience the suits are brought in those divisions respectively corresponding to the remedies sought. If it happens that what would have been equitable relief is sought in the King's Bench, it may be granted there, but it is more likely to be assigned to the Equity Division, and vice versa. Judges familiar with the equity practice are appointed to the Equity Division, and those familiar with the law side of the practice are sent to the King's Bench. Then there has grown up a separate branch of the High Court in which only commercial cases are heard, and to that court Judges familiar with the law merchant and commercial contracts and customs are assigned and the cases are heard and decided with remarkable dispatch. They are, perhaps, agreed cases, but they are submitted and disposed of, even the important, within forty days.

The means by which this reform was accomplished and the avowed object of the framers of the rules were to effect "a change in procedure which would enable the Court at an early stage of the litigation to obtain control over the suit and exercise a close supervision over the proceedings in the action." Thus could dilatory steps be eliminated, unnecessary discovery prevented, needed discovery promptly had, and the decks quickly cleared for the real nub of the case to be tried. It was first proposed to discard pleadings, but this was abandoned. Suit is begun by service of a writ of summons. Shortly after the appearance of the defendant, a summons for directions is issued to him, at the instance of the plaintiff, requiring him to appear before a Master or Judge to settle the future proceedings in the cause. In the King's Bench this work is done by Masters. In equity and commercial cases, it is usually done by the Judge to whom the case is assigned. The Master or Judge makes an order as to the manner in which the case shall be carried on and tried. In cases in which the original writ is endorsed with notice that the claim is for a fixed sum as upon a contract, a sale of goods, a note, or otherwise, and the plaintiff files an affidavit that there is no defense, the Master may, under Rule 14, require the defendant to file an affidavit showing that he has a good defense and specifying it before he may file answer. If he files no such affidavit, summary judgment goes against him. In other cases, the Master or Judge makes an order, fixing time for pleadings and kind of trial, and no step is thereafter taken without application to the Master or Judge, so that the latter supervises all discovery sought, decides what is proper, and requires the parties "to lay their cards face up upon the table," and the real issue of fact and law is promptly made ready for the trial.

Demurrers are abolished. An objection in point of law may be made either before, at, or after the trial of the facts. Particulars in pleading may be had by a mere letter of inquiry from the solicitor of one party to the other, and any refusal is at once submitted to the Master or Judge. Should either party object to the orders of a Master, the question can be at once referred to the Judge who is to try the cause and passed on. The pleadings are very simple. They are a statement of claim and an answer. Great freedom is allowed as to joinder of actions and parties and in respect to set-offs and counterclaims. The pleadings are prepared on printed forms for use according to the rules, with details written into the paragraphs. The nature of the claim is stated in a very brief way. A blank paragraph is left in the form for particulars as to the main facts and for references to documents relied on. The main facts and the documents upon which each side relies to establish its case or defense are thus brought out before trial, and all in a very short time. Admissions of important facts are elicited by each side from the other to save formal proof and its expense, on penalty of costs for refusal if the fact proves to be uncontested.

The effect of the administration of justice under these rules can be shown in some degree by reference to the judicial statistics of England and Wales for 1919 in the disposition of cases in the High Court of Justice, King's Bench Division. The summonses issued in the King's Bench Division in a year amounted to 43,140. In 14,244 cases, judgments were entered for the plaintiff. In 386 cases, judgments were entered for the defendant. In 526 cases other judgments were entered than either for the plaintiff or the defendant, making a total of 15,136 judgments entered in the suits brought. This would leave undisposed of about 28,000 writs of summons issued. This sum represents the suits brought which were abandoned or which resulted in satisfaction of the claim without further proceeding beyond the issuing of the summons. Of the judgments rendered, over 9,000 were entered in default of appearance of the defendant; 756 by default other than in default of appearance; 2,684 judgments were entered as summary judgments under Order 14, because the defendant would not make the necessary affidavit to justify his securing leave to answer. One hundred and forty-one judgments were rendered after trial with a jury. Eight hundred and thirty-six judgments were rendered after trial without a jury. Thirty-five were rendered on the report of the official referee. Of the judgments for defendants, 55 were rendered after trial with a jury, and 309 after trial without a jury. This shows how thoroughly the preliminary steps to the preparing of the issue winnow out the cases and dispose of them without further clogging of the docket.

The speed with which this system disposes of the business was testified to by the New York State Law's Delays Commission twenty years ago. It reported to the governor of that state in 1903 that twenty-three Judges of the High Court of Judicature in England actually tried twice the number of cases in a year that forty-one Judges in New York City tried in the same time, and that the difference was due to the operation of summons for directions and the summons for summary judgment. The report was approved by the Association of the Bar of the City of New York. It was sought to introduce this reform for New York City by Act of the legislature providing for fifteen masters, but it is said to have been beaten by the influence of those who did not wish to abolish the referee patronage in the New York courts.

The English system is adapted to the conditions prevailing in that country and has been built up on the traditions of the bench and bar, which do not have the same force here. Moreover, it is much more applicable to the disposition of the litigation of a great city like New York, Chicago, or Philadelphia, as the New York Commission found it to be, than to our Federal courts of first instance. In the first place, the territorial jurisdiction in England is a compact one, embracing only England and Wales, and in which there are nearly five hundred county courts, disposing, under the simplest procedure, of much of the business involving less than £100 in law cases and £500 in equity cases. The branches of the High Court of Judicature to which these rules of procedure apply are centered in London, the Judges live there, and while the assizes are held at various towns in England and in Wales, access to London is easy, and the natural result is that the important cases are generally either brought in London or ultimately reach there for their disposition. The division of the profession into barristers and solicitors, and the small number of the active members of the bar, as compared with our own, make it easy to form an atmosphere of accommodation on the part of counsel toward the court and toward one another, which could hardly exist in the administration of justice in a Federal court covering all or half a state, and involving litigation in which the counsel who appear are engaged in that court in only a small part of their practice. The English barristers know their clients only through the briefs of the cases which are handed them to enable them to conduct the cause in court. They present the case in an impersonal way. Their fees are fixed in advance and are not contingent. These circumstances render much less common efforts at delay and the use of legal procedure to prevent the prompt rendition of justice. More than this, the system of costs in the English courts, in which the defeated party is made to pay the expenses of the other side, including solicitors' and reasonable barristers' compensation, restrains counsel by the fear of penalties always imposed for useless proceedings.

The costs in English courts would seem to be too heavy. I am sure that we never could be induced to adopt the division of the profession into barristers and solicitors, or the English system of costs.

But these differences should not prevent our using a great deal of what has proved effective in the English practice to simplify procedure and speed justice in our Federal courts. The English precedent certainly demonstrates the advantage of having the procedure by rules of court, framed by those most familiar with the actual practice and its operation and most acute to eliminate its abuses and defects.

What I would suggest is that Congress provide for a commission, to be appointed by the President, of two Supreme Court Justices, two circuit judges, two district judges, and three lawyers of prominence and capacity, to prepare and recommend to Congress amendments to the present statutes of practice and the judicial code, authorizing a unit administration of law and equity in one form of civil action. The Act should provide for a permanent commission similarly created, with power to prepare a system of rules of procedure for adoption by the Supreme Court. Power to amend from time to time should also be given. The rules and their amendments, after approval by the Court, should be submitted to Congress for its action, but should become effective in six months, if Congress takes no action. In this way the procedure would be framed by those most familiar with it and by those whose duty it is to enforce it. The advantage of experiment in the laboratory of the courts would furnish valuable suggestions for bettering the system. The important feature of such a system is that needed action by the commission and the Court will be promptly taken and the necessary delay in a Congress crowded with business may be avoided.

The reforms that I have been advocating involve some increase in the power of the judges of the courts, either in the matter of the assignment of judges, in the matter of the enlargement of the *certiorari* power, or in the adoption of more comprehensive rules of procedure. I am well aware that they will be opposed solely on this ground, and that the objection is likely to win support because of this. It is said that judges are prone to amplify their powers, — that this is human nature, and therefore the conclusion is that their powers ought not to be amplified, however much good this may accomplish in the end. The answer to this is that if the power is abused, it is completely within the discretion — indeed within the duty — of the legislature to take it away or modify it.

Dependence upon action of Congress to effect reform, to remove delays, and to bring about speed in the administration of justice has not brought the best results, and some different mode should be tried. The failures of justice in this country, especially in the state courts, have been more largely due to the withholding of power from judges over proceedings before them than to any other cause; and yet judges have to bear the brunt of the criticism which is so general as to the results of present court action. The judges should be given the power commensurate with their responsibility. Their capacity to reform matters should be tried to see whether better results may not be attained. Federal judges doubtless have their faults, but they are not chiefly responsible for the present defects in the administration of justice in the Federal courts. Let Congress give them an opportunity to show what can be done by vesting in them sufficient discretion for the purpose.

XLVIII. THE JURY SYSTEM

1. TRIAL BY JURY[1]

By James L. Coke

Chief Justice of the Supreme Court of the Territory of Hawaii

In tracing the history of the trial by jury we must regard it as a development arising at first from a germinal element, shaping itself in form and character, adapting itself to changing conditions in the course of time, but in the main possessing some distinctive element to identify it with the idea that gave it birth.

In ancient Athens, during the time of Pericles, the judicial trial, civil as well as criminal, was transferred to numerous dikasts or panels of jurors selected from among the citizens, six thousand of whom were annually drawn by lot, sworn, and then distributed into ten panels of five hundred each, the remainder forming a supplement in case of vacancies, and except that these dikasts were the judges of the law as well as matters of fact, there would be a very close similarity between them and our modern jury.

And also the method of trial by the Roman Comitia embodied the principles of trial by jury. Likewise in the early days of Teutonic nations, as well as ancient Scandinavia, tribunals were in existence which bore a close analogy to the present-day jury.

Some writers mention that there was no trial by jury in England prior to the Norman Conquest but I think it is more than probable that trial by jury in civil causes was introduced there by the Romans and this system was carried on through the Saxon period after their arrival in Britain.

The trial in criminal cases was by ordeal, compurgation, and combat, and it was not until the reign of King John that we find the use of juries in criminal cases. Pursuing our investigation we see the jury being gradually evolved and fixed as an important element, and under various influences and modifications assuming its place as an established institution, at first more or less nebulous, but growing into more distinct and recognized form in the Norman period, not of course all at once becoming established in preference to other methods of investigation, but it finally became to the exclusion of all other methods an efficient mode of the trial of both civil and criminal cases. From an irresponsible body restrained by no regular rules, it was afterwards directed and controlled in its actions and proceedings by learned jurists under rules of enlightened procedure, which made its action safe and efficient and secured for it public regard and confidence.

---

[1] Reprinted from the *Oregon Law Review*, June, 1922, pages 177–183. This was a lecture delivered before the Tokyo Imperial University when Japan was considering adopting the jury system.

As remarkable and renowned instances of the courage of juries in England, we have centuries ago the trial and acquittal of Throckmorton in the time of Mary, and of the seven bishops in 1688, which will ever remain thrilling narratives in history and perhaps gave rise to the reference to the right of trial by jury as the palladium of English liberty. Indeed, the Magna Carta remains today one of the main foundations of the liberty of the people of that country, and its chief glory lies in the provision that "no freeman shall be imprisoned or disseized of his freehold but by the lawful judgment of his peers and the law of the land"; and as the various English colonies in America came to establish independent state governments and later a Federal government, they very generally provided in their constitutions for a perpetuation of the common-law institution in judicial procedure, then and since known as trial by jury.

The Supreme Court of the United States in one of its early decisions[1] referred to that institution in the following language: "The trial by jury is justly dear to the American people. It has always been a subject of deep interest and solicitude, and every encroachment upon it has been watched with great jealousy."

So in the sixth amendment of the United States Constitution it is provided that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury," and the seventh amendment reads: "In suits at common law where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved." This refers of course only to suits in the Federal courts and does not apply to suits in equity or admiralty cases, nor does it limit the action of the states in their own legislation.

---

[1] 3 Pet. 446.

If any human work ought to be cherished and regarded with sanctity by the American and English people, it is those guaranties contained in the fundamental laws of those countries guaranteeing the right to trial by jury. These are bulwarks of national life, of general prosperity, and of countless blessings, primal lights shining with the steadfast fidelity of the North Star and the Southern Cross.

Many years of practice in the courts as well as a rather extended tenure on the bench have strengthened my regard for the jury system and lead me to remark that in my opinion judges are not preëminently fitted over other men of good judgment in business affairs to decide upon mere questions of disputed fact.

Without any special reason that I know of, twelve has from early times and by common consent been adopted as the proper number to compose a jury. Just how this rule was adopted is more or less obscure, but it is said that an English King of Wales asserted that it was based on apostolic law. "For," said he, "as Christ and his twelve Apostles were finally to judge the world, so human tribunals should be composed of the king and twelve wise men."

One author says, "If the twelve Apostles on their twelve thrones must try us in our sacred state, good reason we have to use the law to appoint twelve men to try us in our mortal forums. The Tribes of Israel were twelve; the Patriarchs were twelve, and Solomon's officers were twelve. Therefore not only matters of fact were tried by twelve, but in England twelve judges used to try matters of law in the Exchequer Chamber."

Of course there is no magic in the number twelve, but it is large enough to be representative and at the same time not unwieldy. In the selection of the jury, great care and discrimination should be exercised for the efficiency of the body as a part of the administration of justice. Very much depends upon a careful and proper selection of jurors, and the greatest abuse of the system and the complaints against it are not based so much on the nature and functions of the body as upon the character of the class sometimes composing it.

It is of the highest importance that juries may be composed of citizens of experience and sound judgment. A juror should be a citizen, an elector of the country, and should also be esteemed in the community for integrity, good character, and sound judgment, able to read and write the official language of the realm, and possessed of his natural senses. The period of qualification is sometimes arbitrarily fixed at between twenty-one and sixty-five years of age. At any rate a person beyond the age of sixty-five is given the right to claim exemption from jury duty. There are certain classes which should be permanently exempt. A partial list of those would include professors, students, clergymen, lawyers, physicians, letter carriers, telegraph and wireless operators, postmasters, and also members of the military and naval forces of the country.

As for the manner and time of selecting jurymen, one method which appears to operate as satisfactorily as any other thus far devised is for the presiding judge annually to appoint a jury commission composed of reputable citizens, known as the Jury Commission. This commission selects from the list of qualified electors residing within the jurisdiction of the court two hundred and fifty names of men who appear to the commission to have all the qualifications required of jurymen. The names are returned to the court, and the clerk, under the direction of the judge, places these names on separate slips of paper and deposits them in a container, and after these names are thoroughly commingled, one hundred and fifty names are withdrawn by lot and are placed in a box known as the trial jury box, and twenty other names are drawn in the same manner and compose the grand jury. These men are then summoned by the sheriff or other proper official to appear before the court, and they become respectively the petit and grand jurors for the year. Those names not called constitute a reserve to be kept in case the original panel becomes exhausted.

There is a clear distinction between the functions of these two juries. The grand jury is the accusing jury which investigates and, if the evidence warrants, will indict for crime. The right of citizens to be secure from public oppression and public accusation of crime, and from the trouble and expense and anxiety of a public trial before a probable cause is established by presentment and indictment of a grand jury in cases of high offenses, is justly regarded as one of the securities of the innocent against hasty, malicious, or oppressive public prosecutions, and is one of the ancient immunities and privileges of English and American liberty.

The effect of the provisions of the United States Constitution is that no person except on impeachment and in cases arising in the military and naval services shall be held to answer for a capital or otherwise infamous crime unless he shall be previously charged in the presentment or indictment of a grand jury.

The petit or traverse jury is a body of twelve men who try the facts of the case as they are presented in the evidence placed before them. Any less than twelve men would not be a common-law jury, but in civil cases, by consent of the parties, a greater or less number than twelve may constitute the jury, and in fact the parties in that class of cases may waive the right to a trial by jury.

In some jurisdictions in civil cases, unless the party demands a jury trial within a certain period of time after the cause is at issue, the right to a trial by jury will be deemed to be waived and the case will be tried by the judge without a jury.

The verdict of the jury ought to be unanimous. When a cause requiring a jury is ready for trial, twelve names are drawn at random from the trial-by-jury box by the clerk of the court and are examined by the respective parties and so many as are found to be disqualified to act are excused for cause. In criminal cases each party is allowed a limited number of peremptory challenges. When a talesman is excused for cause or by peremptory challenge another name is drawn from the jury box to fill the vacancy, and this is repeated until finally twelve good and true men are impaneled and sworn to try the issues of fact. After the introduction of the evidence and the delivery of the instructions by the court and the argument of counsel, the jury retires to the jury room, where in seclusion it selects a foreman and considers the verdict. When a verdict is reached, it returns to court and presents it to the presiding judge, who directs the clerk to record the verdict, and judgment thereon is entered.

If the jury, after ample opportunity, is unable to agree, the judge will discharge it and record a mistrial, which means that the case will be brought on for retrial at a subsequent date.

In Anglo-Saxon countries the jury has for many decades been considered the most satisfactory means of the trial of questions of fact. Time consecrates, and what is gray with age becomes religion. So it is with the jury system. In America and England the practice is so ancient that it is looked upon by many as a sacred institution. There is, however, considerable divergence of opinion, and many able men are to be found who look upon the jury system as a failure, and not infrequently you hear the lawyer remark that where he has a good and just cause, he would prefer to have it tried without the intervention of a jury, but if he has a weak and doubtful case, then he will insist upon his right to a trial by jury.

2. WHAT IS WRONG WITH THE JURY SYSTEM?[1]

By Arthur Harris McConnell
Attorney, Coeur d'Alene, Idaho

America, no doubt, is more given to criticizing her institutions than any other country on the face of the globe. I presume every American thinks the freedom of speech which the Constitution guarantees is a duty thrust upon him to stir things up occasionally. Very few of us neglect this duty or deny ourselves this privilege. Everything comes in for it occasionally, but, when all else fails, the jury system is always a fruitful source for soulful reflection and destructive logic.

What is wrong with the jury system? Do you know? Has it ever occurred to you that you might be in some measure to blame for the miscarriage of justice for which our courts are daily blamed?

How many men do you know who are willing and, possibly, anxious to serve on juries, whom you consider qualified to be there? How many of these men would you be willing to trust with the settlement of your business affairs or with the determination of your personal guilt or innocence?

I had a case which attracted a good deal of local interest, because of the parties concerned. Both were Jews and both inclined to air their troubles to anyone who would listen to them. It became known as the case of Potash *v.* Perlmutter.

For three days we submitted evidence of the contract between this merchant and his manager. There were a certain fixed salary and a graduated scale of commissions on sales. Because of careful training and coaching and a few threats, my client was fairly submissive. The other party to the suit, confident of his own ability and wishing to impress the jury, put on a show that would have gone big on a vaudeville circuit.

---

[1] Reprinted by permission from the *Canadian Bar Review*, March, 1924, pages 199–202.

The verdict of the jury bore no relation to the contracts submitted, nor to any of the other evidence, which consisted of numerous books of accounts and yards of figures from the adding machine.

Puzzled to know the process of reasoning by which the verdict was reached, I questioned the foreman of the jury — himself a business man of more than ordinary ability.

"Oh, hell!" he said, "I didn't have time to go over all that stuff. I just figured Morris was worth a hundred and seventy-five dollars a month, and that's what we gave him."

A man acting as town marshal shot down two men on the street. At the trial the evidence was strongly against him. The cause was submitted to the jury Saturday afternoon. At ten o'clock that night they returned a verdict of "Not guilty."

Presumably one of the most intelligent men on the jury was the editor of a newspaper in an adjoining town. He said he believed the man was guilty, but that the only chance he saw of an agreement was to work for acquittal, and he wanted to catch the 10:50 train so he would not be away from home over Sunday.

Then, there was the tombstone case. A little widow, in the first pangs of her grief, ordered a monument in memory of her departed husband. It was rather pretentious and, it seemed to me, was adequate to express the great loss sustained, when one took into consideration the size of the estate. But when the company attempted to collect, the widow denied responsibility, claiming the monument was not in accordance with the original specifications.

It became necessary to sue. The evidence was overwhelmingly to the effect that the memorial shaft was not at all according to contract. Imagine, then, the surprise when the jury brought in a verdict for the plaintiff.

Curious to know what had happened to bring about so unexpected a circumstance, I questioned a juror. This was his answer: "Well, when we first went in, they elected me foreman. I told them we would first vote to see whether that stone was according to the contract. We did and they all voted 'No!' 'Well,' I says, 'let's go in with our verdict.' And one of the jurors says, 'What verdict?' 'Why, for the defendant,' I says. But he says, 'Now hold on a minute. Let's not be in too big a hurry. Let's talk this thing over. I don't care whether it's like the agent said it would be or not. I don't care what the contract called for. I've seen that gravestone and I think it's good enough for any Irishman, and I'm going to vote for the company.' Well, we talked it over, and he seemed to know more about it than any of the witnesses, and so we decided he was right."

These juries were not exceptional; they are typical. They represent the people you see around you every day. The average business man, when called upon to serve on a jury, makes every excuse he can think of that may be necessary to relieve him. He hasn't the time to give to the settlement of other people's disputes, even though he may be claiming this right at nearly every term of court. As citizens of the state and of the county, they are unwilling to give a few days' time to the discharge of public business.

I know a man who is looked upon as one of the best citizens of his community, and he so considers himself. He has held some very responsible positions and has always discharged his duties conscientiously and well, but he won't serve on a jury. His pet dodge is that he is prejudiced and could not render a fair and impartial verdict. He is the kind of man who is needed as a juror, but he refuses to serve.

On the other hand, a man who shows a strong desire to sit on a jury is always looked upon with suspicion, and his motives are questioned by the attorneys connected with the case.

What we need is good, honest citizens who are willing to give of their time and their talents for the furthering of the cause of justice among their neighbors and between the state and its citizens; men who are willing to discharge these duties fearlessly and impartially; men who have clear heads and are willing to use them independently to decide the matters placed before them in the same way as they decide the problems that confront them in their daily business life. Too often jurors have a feeling that when a matter gets into court, it assumes an entirely different aspect from what it presented as talked over on the street. The introduction of "whereas" and "wherefore" into the statement of facts does not change the vital issue. Law is common sense brought to bear upon matters in dispute to decide the rights, whether of property or of liberty.

The judges cannot do it all, though they are charged with the principal responsibility. Recently I made a survey of the members of our local bar association and asked each one how he felt about the jury system as compared with a system of judges. With one exception, they all said that if charged with a crime of which they were innocent, or for the settlement of a controversy, they would more willingly submit to one fair-minded judge, or, at most, three, than to any twelve men, taken as most juries are drawn. They would feel more certain of receiving absolute justice. The judges understand the law and know how to apply it to the facts, and the result would be more satisfactory.

Many otherwise good jurors serve under protest, and this lessens their efficiency because they are not interested in the matters submitted to them. Some are rather awed by the surroundings and think that something dramatic is expected of them. In trying to do what is expected of them, they lay stress upon some of the less important matters, and by so doing defeat the ends of justice.

If electors were as keen to assume their responsibilities as they are to demand their rights and insist upon their privileges, justice would not be a travesty, a lawsuit could not be a farce, and a juror might be an example of true Americanism.

3. A SUBSTITUTE FOR TRIAL BY JURY[1]

By Pendleton Howard

Professor of Criminal Law, Columbia University Law School

The recent failures of American juries to convict in notorious cases where the evidence of guilt appeared to be conclusive have gone a long way toward shaking public confidence in the entire administration of criminal justice. And the conviction is widespread among both lawyers and laymen that the jury trial is largely responsible for the interminable delays that have done so much to discredit our machinery of criminal-law enforcement. Making due allowances for the crusading zeal of a certain element of the daily press and the perfervid rhetoric of superheated individuals who would doubtless welcome the adoption of an inquisitorial mode of procedure coupled with increasingly severe penalties, the fact remains that a considerable body of intelligent opinion in the United States is skeptical of the justice and efficacy of the criminal jury. Critics of the institution maintain with constantly increasing audibility that the complex conditions of modern life render it a cumbersome, unreliable, and ineffective method of determining guilt.

---

[1] Reprinted by permission from *The Century Magazine*, April, 1929, pages 683–690.

Partisans of the jury, on the other hand, usually respond with a glowing eulogy of its past services in the cause of the liberties of English-speaking peoples and refer to it as the "crowning glory of Anglo-Saxon jurisprudence." They stress vigorously the point that it is incumbent upon those who join in the chorus of censure to find a substitute that will both safeguard the legal rights of defendants and better serve the interests of society. They fulminate against the "devastating influence of the reformer who would substitute experiment for experience."

English summary justice

Now it may seem extraordinary to the American defenders of this time-honored guilt-finding device that a substitute for jury trial has actually been found in the very country that gave it birth some six hundred years ago and that nurtured it through centuries of social strife and institutional change. Yet no fact stands out more clearly in any contemporary study of the English system of criminal-law administration, nor is there any that is susceptible of more convincing proof.

Criminal statistics are frequently misleading, but in this instance they are both conclusive and eloquent. In England, during 1926, the last year for which statistics are available, no less than 69,695 defendants charged with *indictable* offenses — roughly ninety per cent of the total number — were dealt with in courts of summary jurisdiction, leaving only 7,924 to be committed for jury trial at the higher courts. It is of especial significance that most of the cases disposed of without juries did not result from trivial infractions of the penal law, but were prosecutions of serious offenses which, in most jurisdictions of the United States, would be tried before "twelve good men and true." If we take into further account the large number of defendants who plead guilty when their cases are called for trial at the higher courts, it is probable that not over five per cent of the indictable cases in England actually reached juries. As an eminent English jurist told me: "The criminal jury is smoldering to extinction without protest and with but little debate."

The statistics just cited will be more easily understood if we bear in mind that the old common-law distinction between felonies and misdemeanors is no longer of any vital significance in England. Crimes are classified as *indictable* and *non-indictable*, a practical distinction based upon the mode of trial. Non-indictable, or minor, offenses are tried in the great majority of the cities and counties by benches composed of lay justices of the peace. In London and a few of the larger cities the same types of cases are heard by professional police-court magistrates. These non-indictable cases, being tried without juries, are said to be dealt with summarily; the hearings are called summary trials, and the courts themselves are referred to as courts of summary jurisdiction. Indictable cases, on the other hand, may be subdivided into two classes: crimes of the utmost gravity, such as murder and manslaughter, which the law still requires must be tried only before juries; and a large and constantly growing number of important offenses that may now be dealt with summarily, providing the prisoner waives his right to a jury trial and the bench of justices before whom the matter is pending considers such disposition expedient. The tendency of Parliament within recent years to enlarge the powers of courts of summary jurisdiction to hear and determine indictable offenses, is the most important development in the administration of English criminal justice during the last half-century. It has resulted in the obsolescence of the jury, speedier trials, greater expedition in the business of the courts, a material saving in public expense, and an elimination of unwholesome publicity in certain classes of cases. May we not in the United States, where there is such widespread dissatisfaction with the administration of justice, study with interest and profit this English substitute for the criminal jury — a substitute that is the product of both experiment and experience?

Prior to 1847, courts of summary jurisdiction could try only petty, or non-indictable, offenses. In that year Parliament passed a law permitting persons not more than fourteen years of age charged with certain forms of theft to be dealt with summarily, with the consent of the accused. Such cases had previously been tried only before juries. This legislation was frankly experimental and was followed eight years later by an Act extending the process of summary trial to adults in some of the less serious types of larceny. Since that time there has been a slow but steady encroachment upon the province of the criminal jury. Not only have newly enacted offenses of a serious nature been made triable summarily with the consent of the defendant, but some of the most common of the old indictable offenses have been subjected to the same alternative method of procedure, under conditions rendered from time to time less stringent. In the words of the present Director of Public Prosecutions, Sir Archibald Bodkin: "The history of the development of the summary jurisdiction of justices over indictable cases shows with what trepidation Parliament at first substituted a bench of justices for a jury, and how as experience produced confidence in that tribunal, summary jurisdiction was from time to time extended."

Before the close of the nineteenth century it was possible, under prescribed legal safeguards, to try summarily all persons under the age of sixteen years in all cases except homicide. War-time legislation greatly accelerated the movement by permitting justices to dispose of many newly created offenses which forty or fifty years ago would unquestionably have been reserved for trial by jury. The treasonable offense of trading with the enemy, for example, along with certain prosecutions under the Defense of the Realm Acts, could be dealt with summarily. Under the provisions of the Emergency Powers Act of 1920, passed during the period of industrial unrest that followed the war, several new forms of seditious and treasonable acts may be tried in the same manner.

The Criminal Justice Act of 1925

But by far the most sweeping changes were those effected by the Criminal Justice Act of 1925, which set up a new and enlarged schedule of indictable offenses triable summarily and simplified the whole mode of procedure. Among the most important of the offenses listed in the Act are the following: several common forms of larceny, including larceny from the person and in a dwelling house; obtaining money and goods by false pretenses; receiving stolen property under circumstances which amount to either felony or misdemeanor; obtaining credit by fraud; falsification of accounts; false statutory declarations; certain types of forgery; assaults occasioning bodily harm; wounding or inflicting grievous bodily harm; indecent assaults on children or young persons under the age of sixteen years; indecent or obscene publications; and certain specified offenses against the postal laws and against the coinage. The maximum punishment that may be inflicted by the justices is six months' imprisonment or a fine not exceeding one hundred pounds, or both. Persons convicted summarily may appeal to a Court of Quarter Sessions on grounds of fact or law, or against sentence only; a further appeal may be taken from the judgment of the Court of Quarter Sessions to the High Court, on a point of law only.

The Criminal Justice Act indubitably resulted from a recognition by Parliament of the efficient manner in which courts of summary jurisdiction discharged their functions during the war period. It is significant that, outside of London and some of the larger cities, these courts are composed of unpaid lay justices of the peace — men of experience and judgment who represent all sections of the community and bring to the bench many of the qualities that an intelligent jury is expected to possess. The court of trial sometimes approximates in actual number the twelve good men who try indictments, although, of course, a unanimous verdict is not required. It is said that the justices have the tendency, sometimes so marked in a jury, to ignore considerations of strict law, upon which they are constantly advised by their professional clerk, in an effort to dispense what they consider to be substantial justice. That it is only a question of time until the jurisdiction of summary courts will be further enlarged is the opinion of most experienced observers of the situation. A recent commentator in an English legal review referred to the new law as "simply another long step on the road toward the replacement of the jury by the justice."

Before resorting to a summary trial the court must be convinced such action is expedient. It must consider the nature of the crime, the character and antecedents of the prisoner, and the adequacy of the prisoner, and the adequacy of the punishment which it has the power to inflict. If at any time during the preliminary hearing the court becomes satisfied that it is proper to assume jurisdiction of the case, the charge is read to the defendant and the following question put to him: "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?" If he waives a jury trial, the clerk asks him whether he pleads guilty or not guilty. If he admits the charge, the court calls for a statement of the circumstances, hears the report of the arresting officer concerning the prisoner's record and character (which is invariably of a detailed and impartial nature) and assesses punishment. Where the prisoner denies the accusation, the prosecutor (in England *the person who brings the charge*) and his witnesses are heard. Contrary to American practice, there are no local officials employed by the government to conduct the ordinary run of prosecutions. If the prosecutor (or complainant) is represented by private counsel, the conduct of the prosecution will be left in his hands. If legally unrepresented, the prosecutor may conduct his own case, although in such an event he is usually assisted in the examination and cross-examination of witnesses by the clerk and the presiding justice. Where the defendant has no lawyer, it is the duty of the court to remind him of his right to cross-examine each witness and, if necessary, to assist him in the task.

The defendant is next called on for his defense, if he desires to present any. He is informed of his right to testify under oath in his own behalf, comment on the evidence for the prosecution, make any unsworn statement he pleases from the dock in justification of his actions, or bring forward any witnesses to substantiate his version of the facts. The prosecutor is not entitled to reply unless some point of law has been raised for the defense. But if the defendant has called witnesses, the prosecutor is permitted to introduce evidence in rebuttal. Upon the conclusion of the testimony no further discussion, except on points of law, is allowed. The court then considers the evidence and either convicts or acquits the accused.

The trial is conducted informally and expeditiously, but the spectator feels that justice rather than speed is the desideratum. It has the appearance of a serious and dignified official investigation into the facts, rather than a game of wits between two opposing sides with the court essaying the rôle of referee. In the majority of cases no lawyers appear for either prosecution or defense. This is one of the chief reasons why the ordinary summary proceeding consumes so much less time than a trial on indictment. In those cases where lawyers participate, however, there is no attempt to conceal relevant evidence by either side, no bellowing at witnesses, no dilatory tactics, no derogatory references to the accused, no appeals to the galleries, no judicial scolding, relatively few objections to testimony, and virtually no wrangling between opposing counsel. The court, or the clerk, frequently asks questions in order to clear up doubtful points and effectually terminates any attempt to befuddle the witnesses or obscure the issues. Logic and common sense prevail, instead of rhetoric and confusion.

Some criticism of non-jury trials

With all its advantages, however, the operation of the Criminal Justice Act has not been entirely free from criticism. There are a few High Court Judges who have expressed the opinion that some cases are disposed of summarily which, because of their great importance and difficulty, should be sent for trial to the higher courts. The complaint is sometimes heard, moreover, that in order to bring the case within the jurisdiction of the justices there is a tendency on the part of the police, the prosecutor, and the court itself, to ignore its more serious elements and to deal with it on a less serious basis, with the result that the culprit is inadequately punished. For example, where the circumstances justify a charge of burglary, it is said that the charge may be reduced to "larceny in a dwelling house" in order to make it cognizable by the justices and to enable the defendant to waive trial by jury. Most unbiased observers, however, believe that apparent defects in the administration of the law are far from indicating anything fundamentally wrong with the principle involved, and will be remedied in the light of fuller experience. They prophesy that the time is not far distant when courts of summary jurisdiction will be authorized to try even more important cases and to inflict even severer punishments.

Perhaps the most striking thing about the non-jury trial is its popularity with both parties to the criminal process. The prosecution favors it because the case is disposed of without delay, with less trouble and expense, and with no material witnesses left to disappear or suffer a lapse of memory during the interval between the committal and the trial. The considerations influencing the defendant are even more powerful. If popular prejudice in the community has been aroused by the nature of the offense or the circumstances of its commission, he is likely to fear its effects on the jury and will prefer being dealt with summarily. Under such conditions trial by the court offers an escape from some of the evils of "trial by newspaper." Nor is that all. Where the prisoner realizes that the case against him is a strong one, he will be inclined to elect trial by the justices, with the certainty of a moderate punishment upon conviction, rather than take his chances before a jury with the possibility of a more severe sentence being meted out to him by the higher court. The story is told of a London police-court magistrate who had a pickpocket brought before him on the day after his own gold watch was stolen. Upon hearing the charge his indignation flamed up, and without listening to a word of evidence or ascertaining whether the prisoner desired a jury trial, sentenced him to three months' hard labor. The offender took it gleefully, as there were a "sure fire" case against him and a list of convictions which would have insured him penal servitude for a long period.

American experiments

That the adoption of the optional non-jury trial in the United States would materially relieve congestion in our criminal dockets seems to be a conclusion fully warranted by English experience. We need not, however, rely wholly on the results of foreign practice. Several states of the Union have already made an even more extensive use of trial by judges than is permitted under present legislation in England, and with equally satisfactory results. The fundamental difference between the types of summary jurisdiction resorted to in the two countries lies in the fact that in the United States the trials of indictable offenses are conducted by judges of the superior criminal courts rather than by justices of the peace or police-court magistrates.

Statutes sanctioning an optional trial without jury in prosecutions for felonies and misdemeanors have been enacted in Maryland, Connecticut, Indiana, New Jersey, Washington, Wisconsin, and Michigan. Four of these states — Maryland, Connecticut, Indiana, and Michigan — go so far as to allow waiver in capital cases. The Michigan law, for example, enacted in 1927 as part of a new code of criminal procedure, provides that "in all criminal cases arising in the courts of this state, whether cognizable by justices of the peace or otherwise, the defendant shall have the right to waive a determination of the facts by a jury and may, if he so elects, be tried before the court without a jury." The Washington statute expressly excludes capital cases, and the New Jersey Act does not apply to indictments for murder. In Indiana and Washington the consent of both the prosecuting attorney and the judge must supplement that of the defendant in all cases. In New Jersey it is within the court's discretion to grant or deny the prisoner's request to be tried without a jury. In Maryland, Connecticut, Wisconsin, and Michigan, however, only the consent of the accused is required.

In its *Outline of a code of criminal procedure*, drafted in 1926, the National Crime Commission recommends optional non-jury trials in all except capital cases. Similar indorsements of the plan have emanated from the Missouri Association for Criminal Justice, which recently published a survey of law enforcement in that state, from the Judicial Council of Massachusetts, the New York State Crime Commission, and the Joint Legislative Committee of New York on the Coördination of Civil and Criminal Practice Acts, which submitted a concurrent resolution proposing an amendment to the state constitution authorizing waiver legislation.

Since both the Federal Constitution and state constitutions contain certain clauses guaranteeing the right to trial by jury, it follows that the validity of laws permitting waiver depends on the construction placed by the court on the particular provision under consideration. The constitutionality of this type of legislation has thus far been sustained. In a recent exhaustive study of the question, Professor S. C. Oppenheim concludes that "most constitutional provisions support the construction that jury trial is a *privilege* intended solely for the benefit of the accused and one which he may forego at his election, provided there is legislative authority for so doing." In other words, it is probable that waiver legislation may be enacted in most states without constitutional amendments.

According to the Baltimore Criminal Justice Commission, the great majority of criminal cases in Maryland is dealt with by judges, ninety-three per cent being thus tried in 1925. The criminal courts of Baltimore are able to dispose of ninety-two per cent of the cases within three weeks of arrest — a record perhaps unparalleled in the United States. Judge Carroll T. Bond, of the Maryland Court of Appeals, writes that "charges of a revolting nature, as crimes against women and girls, seem to be tried more frequently before the court" and that negro prisoners "frequently prefer this method of trial to avoid any race prejudice in the jury box." In Connecticut, where the law has been in force since 1921, it is reliably reported that about seventy per cent of all criminal cases are tried before judges without juries. The clerk of the Supreme Court of Errors at Hartford states that the plan "certainly saves very considerable time and money and is apparently preferred by a decided majority of the accused." Reports recently received from court officials in Wisconsin, Indiana, and New Jersey indicate that a considerable proportion of cases in those states are tried without juries with satisfactory results. In Michigan the Act is of too recent origin to justify definite conclusions in respect to its effectiveness. It seems that only in Washington is the statute rarely made use of.

It is perhaps inevitable that a civilization such as ours, dominated largely by material factors and quantity production, should be unduly optimistic of the working of mechanical contrivances in the science of politics. Nor do we sufficiently realize that the successful operation of our criminal-law machinery is dependent on the character of the public servants who operate it and on the social and ethical standards of our society. Those who expect any radical curtailment of criminal activities to result solely from such simple expedients as procedural reforms and increased penalties are likely to suffer rude and permanent disillusionment. But the baffling complexity of our problem of crime and the extent to which its causes are rooted in the social organism are only additional reasons why we should perfect, wherever possible, our machinery of law enforcement.

The English people are not unmindful of their debt to the jury trial. It served in the past not only to combat the exercise of arbitrary power by a despotic executive, but to mitigate the rigors of one of the most barbarous penal codes in history. Yet gratitude for its historic services has not prevented the passage of legislation sanctioning a gradual but none the less certain encroachment upon its province.

The breakdown of American criminal-law administration is a challenge to the intelligence and organizing genius of our people. One trouble is that we are attempting to solve, with far less workable judicial machinery, infinitely more complex problems of law enforcement than those which confront England. The success of summary jurisdiction in that country demonstrates that governmental devices fashioned to serve the political and social requirements of a distant past ought to be reconsidered and evaluated in the light of modern conditions and the tested needs of the present. The antiquity of an institution is no adequate proof of its utility.

XLIX. SOME SIMPLER PATHS TO CIVIL JUSTICE [1]

By Reginald Heber Smith

SMALL CLAIMS COURTS

The inability to provide justice in small causes has always been one of the weakest points in our system of administering justice. From the days of ordeal by battle, the method provided by the common law for proving and reducing to judgment any type of small claim has been cumbersome, slow, and expensive out of all proportion to the matter involved. Our legal system has taken too literally the ancient maxim, *De minimis non curat lex.* A complicated procedure requires the attorney, but the expense for his services is more than the traffic can bear. It was once asked at a meeting of the American Bar Association whether a lawyer in suing for seven dollars wages due his client, a blacksmith, was justified in charging a fee of half that amount. The question reveals the common dilemma — the services were worth the amount charged, and yet, to the blacksmith, it would hardly be satisfactory to collect seven dollars at a cost of three dollars and a half. As Dean Pound puts it: "For ordinary causes our contentious system has great merit as a means of getting at the truth. But it is a denial of justice in small causes to drive litigants to employ lawyers, and it is a shame to drive them to legal aid societies to get as charity what the state should give as a right."

Similarly, court costs constitute an expense prohibitory to small litigation. The man hired at fifteen dollars a week who is put off the first week and not paid the second has a valid claim for thirty dollars but often not a dollar in his pocket. In addition to an attorney's fee, he cannot pay court costs, because he has not been paid; and yet, because he has not been paid, court action is imperative. It is indeed a vicious circle, but within that circle thousands of unpaid wage-earners have been caught.

---

[1] The sections on "Small claims courts" and "Arbitration" are reprinted from *Justice and the poor,* pages 41–42, 52–56, 68–72. The section on "Conciliation" is reprinted by permission of the author from the *American Bar Association Journal,* Vol. IX, pages 746–747, November, 1923.

Delay plays its part by permitting a debtor who has no real defense to file an appearance and answer and interlocutory motions, to have the case continued once or twice, and then, when it is finally called for trial, to default. This serves to hold the plaintiff off for months, to cause him loss of time in court attendance, and to rob the ultimate judgment of much of its worth.

Small tradespeople today are forced to the practice either of wiping all small claims off their books or of selling them at a ridiculous discount to professional collection agencies. They have the possible relief of increasing the price of the necessities they sell, thereby adding the waste of the judicial system to the cost of living. The wage-earner and the small lodging-house keeper, under conditions of modern competition, have not even that relief; they have been obliged to stand their losses. . . .

This deplorable condition is not the result of the evil machinations of any group or class; it is the consequence of the failure of the judicial system to keep pace with the changing conditions of life. In our judicial history small cases were first entrusted to justices of the peace. This plan for a while gave simplicity and dispatch, but when applied to cities it failed utterly. The justices, being subject to no supervision, and depending so much on their fees that J. P. came to mean "Judgment for the Plaintiff," formed unholy alliances with collection agencies, installment houses, and the like, and very generally became actually corrupt. They were so strongly entrenched in local politics that the process of ousting them, which is not yet completed, has been long and difficult. They have aptly been called "those barnacles of jurisprudence," because they have clung on long after their usefulness expired.

In the cities, the justice of the peace was first supplanted by specially created magistrates who, as the cities continued to grow, became just as inefficient and even more corrupt. Finally, they were succeeded by the organized modern municipal court of the type that is now familiar. With the municipal court came honest, trained, and capable judges, but also there came the rules of pleading, of procedure, and of evidence. Honesty and certainty were secured at the sacrifice of simplicity and speed. There has been a steady tendency to increase the jurisdictions of the municipal courts so that they have lost sight of the little cases; expense and delay have been allowed to creep in, with the result that small claims have not been cared for satisfactorily.

In a few communities the last and logical step has been taken of combining the simplicity, speed, and cheapness which were sought in the justice of the peace plan with the honesty and efficiency of the municipal court by a new type of court termed variously "small claims court," "small debtors' court," "conciliation court," and "court for small causes." The name of "small claims court" is the most descriptive and, to avoid confusion, will hereafter be applied to all such courts. . . .

These four types of small claims courts have amply demonstrated that as to small civil causes the defects of the traditional administration of justice can easily be eliminated. In these courts delay is entirely absent. Costs, either through reduction or abolition, cease to forbid access to the courts. The fundamental difficulty of the expense of lawyers is avoided by a simplicity of pleading and procedure in which there is no need for any attorney. The accruing advantage of having the parties brought into direct contact with the judge, of making justice seem a more real thing to the average man, with its resultant beneficial effects on good citizenship and loyalty, can be only mentioned here. The small claims courts are a mighty force in revising the present-day opinion of the humbler classes as to law and courts.

Second, the proceedings must be conducted without lawyers. Only in this way can the simplicity of procedure be maintained and the prohibitive expense of lawyers' services be eliminated. On all the evidence there seems to be no danger in informality of procedure in these small cases. . . .

The third principle is that while procedural law can be cast aside, rules of substantive law must be adhered to. This is the situation at present, and in future extensions of the idea it cannot safely be departed from. In other words, while the small claims courts clearly demonstrate that the doing of justice is not dependent on religious observance of our traditional rules of procedure and evidence, they do not at all invalidate or weaken the principle that justice is best done when it is ascertained and administered by a trained judge, according to the rules of substantive law. . . .

The essential features of a small claims court are extremely low costs or none at all, no formal pleadings, no lawyers, and the direct examination of parties and witnesses without formality by a trained judge who knows and applies the substantive law. . . .

ARBITRATION

Arbitration, as a method of settling disputes, is more generally and better known than conciliation. It stands midway between conciliation and court litigation. Like the former, it is a method that can be used only by consent, and so differs from judicial procedure, which rests on compulsion. But once the agreement is made and the arbitration tribunal has entered its award, the enforceability of the decision rests not on consent as in conciliation, but on the compulsion of legal process by judgment and execution. . . .

Arbitration as provided for by statute in effect permits disputants to create a tribunal of their own, either by agreeing on the persons to arbitrate or by agreeing to use the arbitration machinery of some private organization, as a chamber of commerce. This agreement is generally called a "submission," and if it contains a provision to that effect, the law permits the award to be entered as a court judgment and enforced in like manner. The great defect in the American statutes is that either party may, after the submission and any time before the final award, revoke his agreement and thereby annul all the proceedings.

The arbitration proceeding is obviously one not conducted according to the legal rules of procedure and evidence. So long as the arbitrators give the disputants a fair chance to present their full case, they can conduct the hearings as they like, and accept such evidence as seems to them helpful. More important, statutory arbitration need not at all be a determination of right and wrong according to rules of substantive law. An award may be revoked for fraud, corruption, or serious and prejudicial misconduct, just as the decisions of a court may be set aside on like grounds, but there is no authority for revoking a finding because it fails to accord with rules of law. . . .

Arbitration has been coming more and more generally into use through the insistence of merchants acting through their trade groups or chambers of commerce. Under the energetic guidance of Charles L. Bernheimer, a splendid organization has been built up since 1911 under authority of the Chamber of Commerce of the State of New York, which has been followed elsewhere, notably by the Chicago Association of Credit Men. This revival has been forced by three considerations — first, a desire for a decision by an expert having personal knowledge of trade conditions and customs, a thing which the courts have never been able to afford; second, a hope of supplanting the enmity-provoking litigious method with an amicable procedure which would not interrupt business relationships; and thirdly and chiefly, a determination to escape from the intolerable delays of the regular administration of justice. . . .

Commercial arbitration has not solved the problem of expense, because it has not tried to. Costs and fees have not been prohibitive to business men. It has, however, served to eliminate delay, it has greatly reinforced the idea of conciliation, of which the New York Chamber of Commerce Arbitration Committee says, "Perhaps the most important work of your committee has been in the way of conciliation," and it has, through its informal procedure, occasionally been of direct assistance to poor persons. For us, its great significance is that it has revived the idea, and delivered a body blow to that legal Cerberus of pleading, procedure, and evidence by proving that justice can be as faithfully, more satisfactorily to the parties, and more quickly administered, even as to claims as large as one hundred and fifty thousand dollars, through an informal tribunal which has found no necessity for technical pleadings, or for a predetermined detailed procedure, or for excluding the kind of logical evidence which all the world, except the courts, uses in making its decisions. . . .

A judicial arbitration of a small claim is exactly the same as a proceeding in a small claims court, for the keynote of both is an informal procedure which makes for dispatch, saves expense, and generally renders the attorney unnecessary. And in both, the judgment rendered is in accordance with substantive law. Arbitration, however, is not limited to small claims, but extends to all claims, irrespective of amount. . . .

In their effect on the problem of denial of justice and in the solution that they afford, small claims courts, conciliation, and arbitration have much in common. In all three, court costs cease to prohibit, for they have been minimized or abolished. The proceedings, in their very nature, make dispatch easy and delay difficult. In parallel ways they avoid the fundamental difficulty of the expense of counsel by making the employment of attorneys unnecessary. In all conciliation, in the large proportion of small claims, and generally in matter submitted to arbitration, after rules of pleadings, procedure, and evidence have been eliminated, there is nothing left for the lawyer to do. . . .

CONCILIATION

The purpose of conciliation is to secure peace. We are not discussing international conciliation, or conciliation in collective disputes between capital and labor — this needs to be underlined and kept in mind. We are considering conciliation as applied to the ordinary, everyday disputes between men — those individual controversies (contracts, debts, claims for damages, etc.) that today can be settled only by litigation in the courts.

We are resuming a discussion broken off more than sixty years ago. In the dramatic period that centers around the year 1848, new ideas were abroad in the world; many of our states remodeled their constitutions; and six of them, including New York in the East and California in the West, inserted provisions saying: "The legislature may establish tribunals of conciliation." Not a single tribunal was established; the whole idea was submerged in the swift current of affairs culminating in the Civil War. It was forgotten; but today, after two generations, the subject again presses for attention by the American bar.

The nature of conciliation makes a precise definition difficult. Conciliation is not an institution (like a court); it is a method — a method of procedure, if you wish; but conciliation proceedings are so informal, so flexible, and so variable that our ancient friend, Mr. Chitty, who wrote an early treatise on pleading and knew exactly when to demur to an anticipatory replication in a declaration, would indignantly say that conciliation had no procedure worthy of the name at all. Although we cannot define the method of conciliation in detail because there are no fixed details, we can state its general outline.

Conciliation is an informal proceeding by which two disputants are enabled to discuss the issue between them in private before a tribunal or impartial third person having the dignity of official position, representing the state, who explains to them the rules of law applicable, informs them of the uncertainty and expense of litigation, tries to arouse their friendly feelings and suppress their fighting instincts. If an adjustment agreeable to the parties is reached, the official draws up a proper agreement, has it signed, and certifies it so that it may be entered in court as a judgment. There are no pleadings. There are no rules of evidence. The parties tell their stories in their own words. There are no lawyers; plaintiff and defendant appear in person.

Conciliation and judicial administration

What is the relation of this conciliation proceeding to the administration of justice; where does it fit into our established legal institutions? Conciliation, being flexible, adapts itself to our present system in different ways, and appears in various guises, but a sound analysis reveals, I think, two distinct types of relationship:

1. Conciliation may be carried on by tribunals acting entirely independently of the courts. Here conciliation is an auxiliary to the system of courts. The connecting link is the provision of law that no case can be tried in the courts until first an attempt at conciliation has been made.

2. Conciliation may be employed by the courts themselves. In this case, conciliation becomes a new piece of equipment for securing justice, entrusted to the judges in addition to their duties under our traditional system of litigation.

If we can keep these two types distinctly in mind, it will clarify the later discussion; but it is far more important to note that in both cases conciliation serves and aids the administration of justice. There is much confusion and misunderstanding on this point. There is an idea that the plan of conciliation is hostile to and irreconcilable with our common-law system of securing justice. It is not difficult to see what causes this mistaken conclusion.

Conciliation is the way of peace, while litigation, which grows out of the ordeal by battle, still represents the idea of conflict. The salient features of conciliation are the antithesis of the characteristic features of the common-law trial system: privacy, as against public bearings; no procedure, as against an elaborate procedure; no rules of evidence, as against multitudinous rules of evidence; no jury, as against the guarantee of a jury of one's peers; the absence of attorneys, as against the necessity for the presence of attorneys.

If we had to choose between the two, of course, we should select the common-law system, which alone has the power needed for certain types of cases and persons. But because the two types are opposite it does not follow that they are alternatives, one excluding the other. In truth, they are complementary, each aiding the other.

The conciliation proceeding is used before, and only before, resort is had to litigation in the courts. In so far as it fails, the regular work of the courts in conducting litigation remains unchanged and unimpaired. In so far as conciliation succeeds, litigation is avoided and the burden of the courts is lessened.

We can fix the place of conciliation in the general scheme of things, and incidentally throw further light on the nature of a conciliation proceeding, by contrasting it with a small claims court and an arbitration proceeding.

A small claims court uses very informal procedure, but it is a court of law. Its decision is based on the rules of substantive law. The defendant appears in answer to a compulsory summons. It has legal jurisdiction. Its judgment is as binding as that of any court in the land.

An arbitration proceeding is not a court proceeding. The arbitrator has jurisdiction only when the parties voluntarily sign a submission to arbitration. From that point on, arbitration is compulsory in the sense that the award can be filed in court and is binding on both parties, whether they like it or not.

A conciliation proceeding in its pure form is a voluntary proceeding from first to last. The tribunal has no compulsory jurisdiction over the defendant. The plaintiff cannot sue in the law courts without first coming before the conciliation tribunal, but it has no other power over him. It may or may not follow the substantive law. The conciliator may suggest any honorable adjustment or solution. He cannot render a decision or enter a judgment unless both parties agree to it.

The entirely voluntary character of conciliation is at once the source of its moral power and the limitation on its legal power. What if the defendant refuses to appear? Then conciliation fails. Or, if the plaintiff comes with this attitude: "I am here because I have to go through this form, but my heart and mind are closed; I'll have the law on the defendant yet"? Then again, conciliation fails. Finally, if the conciliator, after hearing the facts, is convinced that the defendant has cheated the plaintiff, but finds that the defendant is obdurate, what can he do? Nothing. He cannot make a finding. He cannot advise the court. His lips are sealed; the conciliation tribunal is like a confessional.

After this catechism, one may think that conciliation is a Utopian dream. As practical men, concerned with the actual improvement of the administration of justice, we are not interested in a metaphysical discussion as to the inherent uprightness of human beings. As proof that conciliation can succeed, we want evidence that it has succeeded.

The present extent of conciliation

Let us take a bird's-eye view and see how far conciliation has already been utilized.

Conciliation tribunals have existed in Norway and Denmark for more than a century. A law providing conciliation tribunals was enacted in North Dakota in 1921, and in Iowa in 1923. These are instances of pure conciliation, administered not by the courts, but by independent tribunals or officers, so that conciliation is an auxiliary to the regular court system.

Conciliation administered by courts is to be found in the small claims courts in Cleveland, Milwaukee, and Minneapolis. The procedure of a small claims court is so informal that it is easily converted into conciliation procedure. The two merge and become indistinguishable. The small claims court in Cleveland, for example, has always been called the "Conciliation Court."

Conciliation is employed by industrial accident commissions. Where cases are not automatically settled and formal hearings appear necessary, several commissions first try an intermediate informal hearing. This plan has been successful; many cases are successfully disposed of. These are not labeled "Conciliation hearings," but that is nevertheless what they are.

Domestic relations courts are more and more invoking this method. Conciliation becomes reconciliation. When it succeeds, it is far more efficacious than any other remedy known to the law.

In 1917 the justices of the New York Municipal Court, acting under power vested in them by law, issued a series of rules providing for conciliation. In America conciliation has been employed only in connection with limited types of cases. We have noted domestic relations and industrial accidents. In North Dakota it applies only to claims of two hundred dollars or less; in Iowa, to claims under one hundred dollars; in Cleveland, to matters involving thirty-five dollars or less. The Minneapolis Conciliation Court has jurisdiction up to one hundred dollars. In cases under fifty dollars it has power to enter judgment; as to cases over fifty dollars it has no compulsory power and this pure conciliation proceeding is little used.

While experiments with conciliation are naturally made on the little cases first, there is no logical reason why conciliation should be limited by jurisdiction or by the amount of money involved. Conciliation is a method, and as such is applicable to other types of cases as well.

Benefits from conciliation

When the New York Municipal Court justices issued their rules they said: "The conciliation system marks a new epoch in the administration of justice in this state."

In so far as conciliation proves successful, certain direct and substantial benefits will flow from it. Because of its very nature, a conciliation proceeding is inexpensive and is not subject to delays. Cheapness and speed are a blessing to all litigants, and a godsend to the poor.

Conciliation prevents litigation by rendering it unnecessary, and this means less congested dockets, less pressure on overdriven judges, and ultimately a lightening of the tax-payer's burden.

Modern conditions of life engender a great deal of friction that in turn produces a mass of litigation. Disputes run all too easily into class, religious, and racial animosities and prejudices. Litigation tends to inflame and perpetuate quarrels. When the state provides conciliation tribunals, it teaches the lesson of moderation, forbearance, mutual adjustment, and honorable compromise. When conciliation becomes firmly established in the traditions of a people, it exerts a powerful influence for their greater happiness, prosperity, and safety.

L. LAWLESSNESS AND THE LAW[1]

By Nicholas Murray Butler
President of Columbia University

There is general and commendable concern throughout the United States at the amount and character of the lawlessness which is brought to the attention of the public day by day. When such a state of affairs exists over a wide territory and for a considerable time, it is plain that there is a lack of correspondence or adjustment between law and conduct which requires more than the superficial examination usually given to it. There is outcry for more laws, for quicker and more severe penalties, despite the fact that these are precisely the steps which may aggravate the existing situation rather than relieve it. There have been laws against theft ever since Moses went up to the top of Mount Sinai, and doubtless long before that, but thieving of all sort and kinds was never more popular or more widely indulged in than at the present moment. Perhaps education, with emphasis upon moral self-discipline, would succeed where law fails.

If society punishes the lawbreaker in a spirit of vengeance and reprisal, that is at least to be understood, even if not applauded; but if society punishes the lawbreaker in the hope and expectation of thereby preventing others from breaking the same law, then society is flying in the face of all the teachings of history and experience. No man with murder in his heart holds his hand because he has read in his newspaper that a murderer in another city has just been executed. Very slight acquaintance with the psychology of the lawbreaker would quickly reveal the fact that he himself always expects to escape detection and possible punishment and that what has happened to some precedessor in lawbreaking has little or no terror for him. Elihu Root put the kernel of the whole matter succinctly and with precision when he declared in speaking to the American Society of International Law in 1908 that:

---

[1] President's Annual Report, 1929, pages 35–38.

> It is only in exceptional cases that men refrain from crime through fear of fine or imprisonment. In the vast majority of cases men refrain from criminal conduct because they are unwilling to incur in the community in which they live the public condemnation and obloquy which would follow the repudiation of the standard of conduct prescribed by that community for its members. As a rule when the law is broken the disgrace which follows conviction and punishment is more terrible than the actual physical effect of imprisonment or deprivation of property. Where it happens that the law and public opinion point different ways, the latter is invariably the stronger.[1]

What irks men is the loss of prestige, of esteem, of business and of social standing; that which they dismiss with unconcern, if indeed they think of it at all, is the likelihood of detection and criminal punishment. The gist of the matter is that lawlessness will come to an end, save as concerns the permanent criminal fringe of society, whenever that public opinion which the lawbreaker fears punishes him with its overwhelming disapproval. The law whose infraction calls out that disapproval is a good law; the law which does not call out that disapproval is a bad law. Moreover, this is not a question which can be settled by majority vote. It cuts far deeper into the social and moral structure than that. Those legalistically minded persons who are fond of insisting that all laws, whether good or bad, must be obeyed — or, as they say, enforced — while they remain upon the statute book, overlook the fact that this has been the cry of every tyrant and dictator from the beginning of history. Such persons would be gravely concerned alike for the sanity and the patriotism of the author of Thoreau's essay on "Civil disobedience" and highly scandalized at the opinion which Thomas Jefferson expressed in a letter written to Mrs. John Adams when he got news of Shays' Rebellion in Massachusetts:

> The spirit of resistance to government is so valuable on certain occasions that I wish it to be always kept alive. It will often be exercised when wrong, but better so than not to be exercised at all. I like a little rebellion now and then. It is like a storm in the atmosphere.[2]

The fact of the matter is that the time has come for a pretty complete overhauling of some prevailing notions of law and for a readjustment of men's thinking to contemporary conditions as they actually are. When conduct and the law are at odds, the fault may lie with the law. The matter will at least repay being looked into. The theory that law is the outgiving of some indisputable sovereign power which has full authority and capacity to enforce its prescriptions, is an unsubstantial dream. There is no better definition of law than that it is such ordering of the social relations as is upheld by the general will. Laws are not made by legislatures or by courts except in form, save in so far as the general will accepts them. No law which has to do with human thought or speech or conduct can by any possibility be enforced. The classic illustration is Galileo's famous *E pur si muove*, which, even if apocryphal in fact, is wholly true in spirit. No fewer than three states of the American Union have indulged in the legislative stupidity of enacting statutes to forbid the teaching of the doctrine of evolution in schools supported in any degree by public funds. The folly of this proceeding can only be excelled by its fruitlessness. For the encouragement of the people of the states of Arkansas, Mississippi, and Tennessee and that they may not weary in well-doing, the fact may be recorded that it is only three hundred and twelve years since the Congregation of the Index censured the classic but wicked work of Copernicus, *De orbium coelestium revolutionibus*.

---

[1] Elihu Root, *Addresses on international subjects*, Harvard University Press, 1916, page 27.

[2] *The writings of Jefferson*, collected and edited by Paul Leicester Ford, G. P. Putnam's Sons, 1894, Vol. IV, page 370.

Violation of a law of this kind may, if society chooses, be criminally punished, but that is a quite different matter from enforcing the law. Such a law is not, and cannot be, enforced, simply because it is by nature unenforceable. If it is accepted and acted upon, well and good. Otherwise it is a dead letter, with occasional outbursts of official industry directed toward the punishment of its violators. All this is true of the thousand and one compulsions, prohibitions, and restrictive regulations of one sort or another, both legislative and administrative, which crowd our American statute books and which are the joy and delight of the legalistically minded.

The cure for lawlessness is not to pass more laws, still less to inflict more rigid, more severe, and more cruel punishments for law violation. These can only be more or less futile and aggravating expedients. The true cure is, first, not to enact or promulgate laws which the general will does not or will not accept, and then to train that general will to a habit of intelligent self-discipline which will make it law-abiding and law-conforming when it accepts laws as just and right. The treatment of the criminal, with a view to his detention if incorrigible and to his training back to useful citizenship if he be the contrary, is another matter and a very large one, upon which it would be inappropriate to enter here.

These considerations point to the necessity of overhauling much of that part of the social fabric which is called law. There are several and excellent plans on foot to restate the law, but a care must be had that in these restatements there are not enshrined and given new life old errors and fallacies which it is high time were left behind altogether. The present task is to examine the legal structure of society in the light of its present-day moral, economic, and business structure and to ascertain where the path of progress begins and in what direction it will lead.

LI. CRIMINAL JUSTICE IN THE AMERICAN CITY[1]

BY ROSCOE POUND

IN the Mosaic law, if an ox gored a man, the ox must be surrendered for vengeance. In Athens, when a man was killed by the falling of a branch from a tree, the kinsmen of the dead man solemnly chopped down the tree. At Rome, if a domestic animal did any injury, the owner must surrender the animal to the vengeance of the injured person or pay a penalty for standing between the latter and his vengeance. When Huckleberry Finn's father stumbled over the barrel, he promptly kicked it in response to the same instinct. So when things go wrong in the conduct of government or in the administration of justice, the instinct of pugnacity is aroused and the public cries out for someone to be hurt. The general assumption is that legal and political miscarriages resolve themselves into a matter of good men and bad men, and that the task is a simple one of discovery and elimination of the bad.

In truth, the matter is much more complicated than the bad-man interpretation of social and political difficulties assumes. Much beside individual character needs to be considered in order to understand the shortcomings of legal administration. For good men, if we get them, must work in the social and political and legal environment, and with the legal and administrative tools of the time and place. Often the best of men are the victims of bad or inadequate machinery which impedes their earnest efforts to do right, and may even constrain them to do what they would not do freely. Easy-going men of the best intentions become caught in the machinery and unconsciously become part of it. Moreover, bad men, who commonly make their livelihood by their wits, are unceasingly vigilant to take advantage of the opportunities which outworn or inadequate machinery affords. Where the good are impeded by the instruments with which they must work, the easy-going give up the effort to do things in the face of the impediments and let the machinery take its own course. Thus the well-intentioned drift. It may be that the ill-intentioned secretly give direction to the drift; but quite as likely the drift is to their profit because they are watchful to make it so. We may not expect that any political or legal machinery may be conceived which will eliminate wholly these opportunities for the ill-intentioned to warp the administration of justice to their desires. Yet some machinery increases them both in number and in possibilities, and it must be our study to devise political and legal apparatus which will reduce them to a minimum in both respects.

---

[1] Reprinted and abridged by permission of the author from *The Cleveland crime survey*, Part VII, published by the Cleveland Foundation.

Along with the bad-man interpretation there commonly goes a faith in legal and political machinery in and of itself: a belief that when anything goes wrong we should appeal at once to the legislature to put a law upon the statute book in order to meet the special case, and that if this law is but abstractly just and reasonable, it will in some way enforce itself and set things to rights. We must enact the one perfect law for each special situation and put out of office the one bad man who perverts its operation. Then all will go well of itself. This faith in legal and political machinery is inherited and deep-rooted. Our Puritan forbears abhorred subordination of one man's will to another's, and sought rather a "consociation" in which men should be "with one another, not over one another." They conceived of laws as guides to the conscience of the upright man, and believed that if laws were inherently just and reasonable, they would appeal to his conscience as such, and secure obedience by their own moral weight. This mode of political thought, well suited to the needs of a small group of God-fearing men founding a commonwealth in a new world, is ill suited to the needs of the enormous groups of men of all sorts and conditions who jostle each other in the city of today. There, law must be more than a guide to conscience. There, men will not take time to consider how the intrinsic right and justice of the law appeal to their consciences, but in the rush and turmoil of a busy, crowded life, will consider offhand how far the law may be made an instrument of achieving their desires. There, good laws will not enforce themselves, and the problem of enforcement becomes no less urgent than the problem of providing just laws. The administrative element in justice, the work of adjusting the application of law to individual cases with an eye to their unique features, becomes increasingly important as we become more crowded and division of labor becomes more minute and individual wants and desires and claims come in contact or conflict at more points. In this administrative element of justice, men count for more than machinery. And yet even here men must work with machinery. The output is a joint product of man and of machinery, and it happens as often that what the man does is dictated by the capacity or the exigencies of the machine as that what the machine does is dictated by the will of the man.

Not the least significant discoveries of modern psychology are the extent to which what we have called free will is a product, not a cause, and the extent to which what we take to be reasons for actions are but rationalizings of what we desire to do and do on different grounds. In the administration of justice there are many subtle forces at work of which we are but partially conscious. Tradition, education, physical surroundings, race, class and professional solidarity, and economic, political, and social influence of all sorts and degrees make up a complex environment in which men endeavor to reach certain results by means of legal machinery. No discussion simply in terms of men or of legal and political machinery, or of both, ignoring this complex environment, will serve. At whatever cost in loss of dramatic interest or satisfying simplicity of plan, we must insist on plurality of causes and plurality and relativity of remedies.

Both the bad-man interpretation and the faith in legislation and new laws as remedies illustrate a common mode of thinking which seeks to explain everything by some one cause and to cure every ill by some one sovereign remedy. It is not hard for an ordinary person to toss up one ball so as to keep it in motion continually. With practice one may learn to keep two going at once. But only a skillful juggler can so handle three or more at once. In the same way the ordinary man may think of one cause or one remedy at a time, but finds difficulty in bearing two in mind at once and leaves consideration of larger numbers to the expert. All branches of knowledge, theoretical and practical, have had to contend with this difficulty of holding all the factors of problems in mind at once. In all ages men have sought to avoid this difficulty by searching for some solving word or phrase or some ultimate idea or some universal cure-all, whereby to escape the hard task of thinking of many things in one connection. The several sciences have struggled with the desire for a simplification that covers up difficulties instead of overcoming them and the assumption of one cause for each phenomenon and one remedy for each ill. Neither the science of law nor the science of politics has escaped this struggle to master complex facts by giving them a fictitious appearance of simplicity. Nor has the quest for the simple and easy been more successful in these sciences than elsewhere. There was no easy royal road to learning, and there is no simple and easy popular road to an understanding of law and government and mastery of the difficult problems which each presents. The citizen who seeks such understanding must expect to study hard and think critically and to keep many things in mind at once while framing his judgments. He must expect those judgments to be largely tentative and relative to time, place, and circumstances. Much as he might like to rest in some formula and to believe in the efficacy of some one specific applied once for all, he will find such hope as futile as the quest for the philosopher's stone or the fountain of youth or the one cure for all bodily ills in which men formerly engaged in a like hope of achieving an easy simplicity. At the very outset we must give up the search for a single explanation of the inadequacy to its purposes of punitive justice in action, and hence must give up the search for any single simple remedy.

We may say that the three chief factors in the administration of justice are: (1) the men by whom it is administered; (2) the machinery of legal and political institutions by means of which they administer justice; and (3) the environment in which they do so. One who surveys the workings of a legal system with these three things in mind will not go far wrong. Yet his picture will not be complete nor wholly accurate. He must take account also of certain practical limitations and practical difficulties inherent in the legal ordering of human relations, at least by any legal institutions thus far devised. The purposes of law, as we know them, and the very nature of legal institutions as we have received and fashioned them, involved certain obstacles to our doing everything which we should like to do by means thereof, and even to our doing well many things which we have been trying to do thereby for generations. These practical limitations on effective legal action explain much that, on a superficial view, is ascribed to bad men or bad legal machinery. Hence a forth factor must be added, namely, (4) the bounds within which the law may function effectively as a practical system.

Dissatisfaction with the administration of justice is as old as law. As long as there have been laws and lawyers, conscientious men have believed that laws were but arbitrary technicalities and that the attempt to govern the relations of men in accordance with them resulted largely in injustice. From the beginning others have asserted that, so far as laws were good, they were perverted in their application, and that actual administration of justice was unequal or inefficient or corrupt. In the first stage of legal development one of the Greek Seven Sages said that "laws are like spiders' webs, wherein small flies are caught, while the great break through." In the history of Anglo-American law, discontent has an ancient and unbroken pedigree from Anglo-Saxon times to the present. The Anglo-Saxon law books are full of complaint that the king's peace is not well kept, that justice is not done equally, and that great men do not readily submit to the law which is appropriate to them. Later the Mirror of Justices contains a list of a hundred and fifty-five shares in legal administration. Still later Wyclif complains that lawyers try causes "by subtlety and cavilations of law," and not by the gospel, "as if the gospel were not so good as pagan's law." In the reign of Henry VIII it was complained that good laws were obstructed in their operation by interpretations in the courts in which "everyone that can colour reason maketh a stop to the best law that is beforetime devised." James I sent for the judges on complaint of the Archbishop of Canterbury, and argued to them that "the law was founded upon reason, and that he and others had reasons as well as the judges." In the eighteenth century there was complaint that the bench was occupied by "legal monks," utterly ignorant of human nature and of the affairs of men. After the Revolution the administration of justice in America was the subject of bitter attacks. Many judges were impeached, not for any crimes or misdemeanors, but because the whole administration of justice was suspected or objected to. The movement for an elective bench which swept over the United States about the middle of the last century grew out of these attacks. In England in the first half of the nineteenth century attacks on the courts were hardly less bitter, as the reader of Dickens may readily verify. In our own time the agitation for recall of judges and recall of judicial decisions was strong less than a decade ago. We must not allow this perennial and perhaps inevitable discontent with all law to blind us to serious and well-founded complaints as to the actual operation of the legal system today. But it may give us a needed warning that some discontent is unavoidable, that we may not hope to obviate all grounds of complaint, and that we must begin by taking account of the inherent difficulties, because of which a certain amount of dissatisfaction must always be discounted.

Inherent difficulties

1. The mechanical operation of legal rules. — To a certain extent legal rules must operate mechanically, and the most important and most constant cause of dissatisfaction with all law in all times grows out of this circumstance. A proper balance between strict rule and magisterial discretion is one of the most difficult problems of the science of law. Throughout the history of law, men have turned from an extreme of the one to an extreme of the other and then back again, without being able to attain a satisfactory administration of justice through either. Sometimes, as in the strict law of the late medieval courts in England or as in the maturity of American law in the last half of the nineteenth century, men put their faith in strict confinement of the magistrate by minute and detailed rules or by a mechanical process of application of law through logical deduction from fixed principles. By way of reaction, at other times men pin their faith in a wide magisterial power to fit justice to the facts of the particular case through judicial discretion, as in the administrative tribunals of sixteenth- and seventeenth-century England, the executive and legislative justice of the American colonies, and the executive boards and commissions which are setting up in this country today on every hand.

There are three ways of meeting this difficulty: One is to provide a judicial or magisterial dispensing power, or even a series of devices for introducing discretion into the administration of justice. There are wide and substantially uncontrolled powers in prosecuting attorneys to ignore offenses or offenders, to dismiss proceedings in the earlier stages, to present them to grand juries in such a way that no indictment follows, to decline to prosecute after indictment, or to agree to accept a plea of guilty of a lesser offense. There is the power of the grand jury to ignore the charge. There is the power of the trial jury to exercise a dispensing power through a general verdict of not guilty. Next comes judicial discretion as to sentence or suspension of sentence or mitigation of sentence. Finally there is administrative parole or probation, and in the last resort executive pardon. All these involve uncertainty — opportunity for perversion of the device intended to meet exceptional cases into a means of enabling the typical offender to escape, and a sometimes intolerable scope for the personal equation of the official.

A second way of meeting this difficulty is to eliminate all discretion and seek to meet exceptional cases by an elaborate series of legal exceptions and qualifications and detailed provisos. But human foresight has not proved equal to foreseeing all the varieties of exception for which provision must be made, and the attempt to cover everything by special provisions makes the legal system cumbrous and unworkable.

Hence the law usually ends by adopting a third method of compromising between wide discretion and overminute lawmaking. But in order to reach a middle ground between rule and discretion some sacrifice of flexibility of application to individual cases is necessary.

Herein lies a fruitful cause of popular dissatisfaction with the administration of justice.

2. Difference in rate of progress between law and public opinion. — In seeking to maintain the interests of civilized society through public administration of justice, we risk a certain sacrifice of those interests through corruption or the personal prejudices of magistrates or individual incompetency of those to whom administration is committed. To make this risk as small as possible, to preclude corruption, restrain personal prejudices, and minimize the scope of incompetency, the law formulates the moral ideas of the community in rules and requires the tribunals to apply those rules. So far as they are formulations of public opinion, legal rules cannot exist until public opinion has become fixed and settled, and cannot well change until public opinion has definitely changed. It follows that law is likely to lag somewhat behind public opinion whenever the latter is active and growing.

3. Popular underestimation of the difficulties in administering justice. — Much popular dissatisfaction with justice according to law arises from a popular assumption that the administration of justice is an easy task to

which anyone is competent. If the task of law may be described in terms of social engineering, laws may be compared to the formulas of engineers. They sum up the experience of many courts with many cases and enable the magistrate to apply that experience without being aware of it. In the same way the formula enables the engineer to utilize the accumulated experience of past builders even though he could not of himself work out a step in its evolution. The lay public are no more competent to construct and apply the one formula than the other. Each requires special knowledge and special preparation. But the notion that anyone is competent to understand what justice requires in the intricate controversies and complicated relations of a modern urban community leads to all manner of obstacles to proper standards of training for the bar, to low standards of qualifications for juridical office, and to impatience of scientific methods and a high measure of technical skill. This notion was especially strong in pioneer America, and its influence may be seen in extravagant powers of juries, lay judges of probate, and legislative or juridical attacks upon the authority of precedents in most of the states of South and West. In criminal law it is usually manifest in legislation committing the fixing of penalties to trial juries, not perceiving that the trier, in order to determine the facts fairly, ought not to know certain things without which, on the other hand, the penalty cannot be fixed intelligently.

4. Popular impatience of restraint. — Law involves restraint and regulation with the sheriff and his posse or the police force in the background to enforce it. As a society becomes more complex, as it carries further the division of labor, as it becomes more crowded and more diversified in race and in habits of life and thought, the amount of restraint and regulation must increase enormously. But however necessary and salutary this restraint, men have never been reconciled to it entirely; and most American communities are still so close to the frontier that pioneer hostility toward discipline, good order, and obedience is still often a latent instinct in the better class of citizens.

Whether the law is enforced or is not enforced, dissatisfaction will result. Popular impatience of restraint is aggravated in the United States by political and legal theories of "natural law." As a political doctrine, they lead individuals to put into action a conviction that conformity to the dictates of the individual conscience is a test of the validity of a law.

Accordingly, jurors will disregard statutes in perfect good faith, as in the Sunday closing prosecutions in Chicago in 1908. In the same spirit a well-known preacher wrote not long since that a prime cause of lawlessness was enactment of legislation at variance with the law of nature. In the same spirit a sincere and, as he believed, a law-abiding labor leader declared in a Labor Day address that he would not obey mandates of the courts which deprived him of his natural "rights." In the same spirit the business man may regard evasion of statutes which interfere with his carrying on business as he chooses as something entirely legitimate. In the same spirit public officials in recent addresses have commended administrative violation of the legal rights of certain obnoxious persons, and one of the law officers of the Federal government has publicly approved of mob violence toward such persons. Such examples at the top of the social scale do not make for respect for law at the bottom.

Inherent difficulties in all criminal justice

1. Public desire for vengeance. — Historically, one of the origins of criminal law is in summary community self-help, in offhand public vengeance by a more or less orderly mob. Regulation of this public vengeance, giving rise to a sort of orderly lynch law, is one of the earliest forms of criminal law. The spirit which gave rise to this institution of summary mob self-help in primitive society is still active. It has its roots in a deep-seated instinct, and must be reckoned with in all administration of criminal justice. Moralists and sociologists no longer regard revenge or satisfaction of a desire for vengeance as a legitimate end of penal treatment. But jurists are not agreed. Many insist upon the retributive theory in one form or another, and Anglo-American lawyers commonly regard satisfaction of public desire of vengeance as both a legitimate and a practically necessary end. This disagreement is reflected in all our criminal legislation. Statutes enacted at different times proceed upon different theories. Indeed, the usual course is that adherents of one theory of penal treatment will procure one measure, and adherents of a different theory another, from lawmakers who have no theory of their own. For nothing is done with so little of scientific or orderly method as the legislative making of laws.

2. The close connection of criminal law and administration with

politics. — Criminal law has a much closer connection with politics than the civil side of the law, and this operates to its disadvantage, particularly in respect of administration. There is relatively little danger of oppression throuch civil litigation. On the other hand, there has been constant fear of oppression through the criminal law. In history drastic enforcement of severe penal laws has been employed notoriously to keep a people or a class in subjection. Not only is one class suspicious of attempts by another to force its ideas upon the community under penalty of prosecution, but the power of a majority or even a plurality to visit with punishment practices which a strong minority consider in no way objectionable is liable to abuse. Whether rightly or wrongly used, this power puts a strain upon criminal law and administration. Also criminal prosecutions are possible weapons of offense and defense in class and industrial advantage through abuse of the prosecuting machinery, giving rise to political struggles to get control of that machinery. Thus considerations of efficient securing of social interests are pushed into the background and the atmosphere in which prosecutions are conducted becomes political. In practice the result is, when the public conscience is active or public indignation is roused, to be spectacular at the expense of efficiency. When the public conscience is sluggish and public attention is focused elsewhere, the temptation is to be lax for fear of offending dominant or militant political groups.

3. Unreliability of criminal evidence. — Inherent unreliability of evidence upon which tribunals must proceed affects all departments of judicial administration of justice. But in criminal law, where passions are aroused, where the consequences are so serious, where unscrupulous persons are so apt to be arrayed on one side or the other, the difficulties growing out of the necessity of relying upon human testimony are grave. Psychologists have demonstrated abundantly the extent to which errors of observation and unsuspected suggestion affect the testimony of the most conscientious. Undoubtedly there is much practical psychology and trained intuition behind the common-law rules of evidence; but they are based largely on the psychology of the jury rather than on that of the witness. The problem of lying witnesses, defective observation, and suggestion, as affecting proof in criminal cases, has yet to be studied scientifically by American lawyers. The maxims and presumptions in which we

express our practical experience in these connections are too much of the rule-of-thumb type, and are apt to be merely pieces to move in the procedural game between prosecutor and accused.

4. The tendency to put too great a burden on the criminal law. — It is a great disadvantage to the criminal law that it is so interesting in action to the layman. Criminal law is the type of law which figures chiefly in the morning papers; hence when the layman thinks of law, he is almost certain to think of criminal law. Moreover, because of a well-known human instinct, the layman's short and simple cure for all ills is to hurt somebody. Hence every lay lawmaker turns instinctively to the criminal law when he comes to provide a sanction for his new measure, and every new statute adds one more to the mass of prescribed penalties for which a criminal prosecution may be invoked. It is impossible for any legal machinery to do all which our voluminous penal legislation expects of it. Serious study of how to make our huge annual output of legislation effective for its purpose without prosecutions and giving up the naïve faith that finds expression in the common phrase, "There ought to be a law against it," as an article in the legislative creed, would do much for the efficiency of criminal law.

The present condition of criminal law

The criminal law of today, throughout the world, is made up more or less of successive strata of rules, institutions, traditional modes of thought, and legislative provisions representing different and inconsistent ideas of the end of criminal law, the purpose of penal treatment, and the nature of crime. This is true especially in Anglo-American law. With us all stages of development and all theories and all manner of combinations of them are represented in rules and doctrines which the courts are called upon to administer. Indeed, all or many of them may be represented in legislative Acts bearing the same date. The result is that our criminal law is not internally consistent, much less homogeneous and well organized. Even if the administrative machinery were all that it should be and the personnel of administration were all that it should be, the condition of criminal law of itself would impede satisfactory administration.

Unfortunately, criminal law never attained the systematic perfection that marks the civil side of the law in Roman law and is beginning to be found on the civil side of Anglo-American law. Until the criminal law is studied as zealously and scientifically and is regarded by teachers, students, lawyers, and judges as being as worthy of their best and most intelligent efforts as the civil side of the law, the administration of criminal justice will continue to fall short of public expectation.

Our Anglo-American judicial and prosecuting organization, criminal law, and criminal procedure, as they grew up and took shape in the fore part of the last century, presuppose a homogeneous people, jealous of its rights, zealous to keep order, and in sympathy with institutions of government which it understands and in which it believes — a people which, in all matters of moment, will conform to the precepts of law when they are ascertained and made known, which may be relied upon to set the machinery of the law in motion of its own initiative when wrong has been done, and to enforce the law intelligently and steadfastly in the jury box. In other words, they presuppose an American farming community of the first half of the nineteenth century. We are employing them to do justice in a heterogeneous, diversified, crowded city population, containing elements used to being trodden on by those in authority, ignorant of our institutions, at least in all but form, with good reason suspicious of government as they have known it, and hence often imbued with distrust of all government, loath to invoke legal machinery, of which they think in terms of the social conditions in another part of the world, and inclined to think of a jury trial as some sort of man hunt, not knowing the nature of the proceedings that have gone before nor appreciating the manifold guarantees by which at common law an accused person is assured every facility for a full defense.

The problems of criminal justice in the American city of today

1. Reshaping of the substantive criminal law. — From the foregoing discussion it will have been seen that before our criminal justice may function satisfactorily the chaotic, internally inconsistent, to a large extent anachronistic, condition of our substantive criminal law must be taken in hand. Studies of prosecution and our criminal courts bring out the relative disproportion in the time devoted to civil as compared with criminal litigation. It is not that the former receives too much judicial attention, but that we have acquired a habit of neglecting the latter.

This is true no less of the substance of the law. We have made great strides in the civil side of the law in a generation. Much has been done in civil procedure in the last two decades. But criminal law has stood still, and with a few notable exceptions in one or two localities criminal procedure remains what it was fifty years ago. Thus the neglect of the criminal law by the leaders of the bar, reflected in neglect of it in our law schools, bears fruit in a backward condition which is full of advantage to the lawbreaker and to those who make their livelihood by representing him. What we have to do is nothing less than to reshape the substantive criminal law so as to maintain the general security and the security of social institutions, and at the same time maintain the social interest in the human life of every individual under the circumstances of the modern city; and we must do this upon the basis of traditional rules and principles in which the latter was chiefly regarded, and yet were warped in their application by those who regarded only the former.

This is too large a subject for the city. As things are, it calls for nothing less than a ministry of justice, at least in each of our larger states; for our so-called departments of justice are but offices for legal advice to state officers, for representation of the state in its civil litigation, and for advocacy in the courts of review in criminal causes. In the Federal government the Department of Justice is more. There it is a well-organized prosecuting bureau. But nowhere is it organized to study the functioning of our legal institutions, the application and enforcement of law, the cases in which and reasons for which it fails to do justice or to do complete justice, the new situations which arise continually and the means of meeting them, what legislation achieves its purpose and what not and why, and thus to give expert and intelligent guidance to those who frame and those who administer our laws. In the rural, agricultural society of the past, the judiciary committees of the houses of the legislature could do efficiently so much of this as was needed. Today, even if our crowded legislative sessions allowed the time, no legislative committee is competent to the highly specialized work required. In consequence, commissions are provided from time to time to study particular subjects. But their work is not coördinated, there is no continuity in what they do nor in what successive legislatures do, and the whole process is wasteful, expensive, and ineffective. A ministry of justice in the foregoing sense was proposed by Jeremy Bentham during the English legislative reform movement of the last century. It was approved by the Conference of Bar Association Delegates at the meeting of the American Bar Association in 1917. It was recommended in 1918 by a Parliamentary Commission, headed by Lord Haldane, as one of the chief items in a plan for reconstruction of the British administrative system.[1] It deserves to be kept in mind by American lawyers as one of the things to be provided in the inevitable reconstruction of our administrative system in a country in which the center of gravity has definitely shifted to the city.

2. Organization of the administration of justice. — It is no less urgent, and more immediately practicable, to organize the administration of justice as a whole and in all its branches, to prune the accumulation of checks and mitigation agencies which discourage prosecuting witnesses and afford opportunity of escape to the guilty, to coördinate responsibility and to supervise and direct and plan and enforce their policies, and with the responsibility for the due functioning of criminal justice, and to correlate the judicial and administrative agencies so that, instead of acting independently, and sometimes in conflict, they will operate with one known policy in all things and will not be able to shift responsibility from one to the other or let it fall down between them, as in the Raleigh prosecution. Only in this way is it possible to insure an efficient machine to dispose of the great volume of prosecution required in the modern city and enforce the great mass of police regulation demanded by the conditions of urban life.

a. Unification of courts. — The system of courts should be unified. An administrative head should be provided with large powers of organizing judicial business, of systematizing the assignment of cases to judges and judges to types of work, of applying the judicial force where the exigencies of the work demand, and of applying it upon that work to the best advantage. Thus, in place of rotation of judges dictated by political exigencies, the personnel of the bench would be employed systematically and intelligently, as the size and importance of the work demand. Also he should have power, in connection with a council of judges, to initiate and determine policies so that the unseemly spectacle of two judges of coördinate jurisdiction applying the same law in two wholly different ways in two adjoining rooms shall come to an end, and he should be responsible for the due functioning of the judicial system in all these respects.

---

[1] To this may be added President Hoover's Commission on Law Enforcement, of which Dean Pound is a member. — The Editors.

b. Organization of the prosecuting system. — The prosecuting system should be unified. The administrative head of the system should have full power to control and responsibility for the acts of his subordinates. He should be required to keep proper records of all that goes on in the course of a prosecution from the beginning, with recorded reasons for his action in types of proceeding where the law, made for simpler conditions, now requires what has become a perfunctory approval by the court. He should be a part of an organized general prosecuting system of the state, not a wholly independent functionary. Note, for example, in the report on Prosecution the public prosecutor may, if he chooses, neglect to assist the court of review with proper briefs or arguments. No publicity attends his neglect of that duty, and he has it in his power to present the state's side of a criminal appeal or not, wholly as he likes.

c. Organization of administrative agencies. — All administrative agencies, including the work now done in connection with the administration of justice by sheriffs, coroners, clerks, bailiffs, and probation officers, should be unified and organized under a responsible head put in proper relation to the head of the judicial system, so as to eliminate friction and insure uniform policies in judicial and administrative action. This administrative head should have the power to determine the details of organization as circumstances require, to systematize and supervise, to initiate and enforce policies, and to set up such technical and expert adjuncts to the court as the business before it may require. He should be responsible for the proper functioning of this part of the administration of justice. He could easily save enough by the proper organization and improved administrative methods to justify the position on that score alone. If for no other reasons, organization of the administrative agencies of our judicial system is demanded by considerations of expense.

3. Preventive methods. — Preventive justice is no less important than preventive medicine. If we think of the legal order in terms of social engineering it must be evident that sanitary engineering is not the least important feature. Prevention at the source rather than penal treatment afterward must be a large item in dealing with crime. No survey would

be complete that did not emphasize the importance of correlating these institutions and agencies with police, prosecution, judicial organization, and agencies of penal treatment. There ought to be no possibility of misunderstanding, friction, or cross-purposes. And this requires that the administrative agencies connected with the administration of justice be unified and organized under a responsible head.

4. Unshackling of administration. — Above all, effective administration of criminal justice in the modern American city calls for an unshackling of administration from the bonds imposed when men who had little experience of popular government and much experience of royal government sought to make rules do the whole work of the legal order. The principle involved in the constitutional separation of powers is really no more than the principle involved in all specialization. Certain things which involve special training or special competency or special attention are done better by those who devote thereto their whole time or their whole attention for the time being. Hence if the officers of a court may best gather and study statistics of judicial administration to the end that such administration be improved, if they may best conduct psychological laboratories or psychopathological examinations or laboratories for the study of criminals, there is really nothing in the nature of a court to prevent. There is no reason why the courts in metropolitan areas may not be so organized as to permit these things, although they are not needed or are less needed in rural areas and hence are not provided for therein. The nineteenth-century political idea of uniformity over geographic areas, thinking in feudal terms of soil rather than of human beings peopling the soil, is not applicable to cities of today in which populations greater than those in whole states when this idea took root in our state constitutions are compressed within a few square miles of municipal jurisdiction. A unification of administrative agencies with power to adapt administration to the peculiar needs of particular localities must supersede rigid uniformity over areas laid out according to the exigencies of the map. Regulation of public utilities, factory inspection, tenement house inspection, building laws, and a score of things of the sort have accustomed us to administrative boards and commissions with wide powers to organize their business and large administrative discretion. There are no such checks upon these boards and commissions as

are operative in the case of courts. And yet, for historical reasons, we are loath to confer upon judicial administrative agencies the latitude which we freely concede to newly created executive agencies. Undoubtedly one of the tasks of American law today is to work out an adequate system of administrative law. But there is no reason to suppose that judicial administration is not as adequate to this task as executive administration.

LII. SOCIETY AND THE DELINQUENT

1. THE DEFECTIVE CRIMINAL[1]

By E. B. Hoag and E. H. Williams
Psychiatrists of the Superior Courts, Los Angeles, California

Every time a murder is committed, our papers are filled with the details of the revolting crime. For a time, usually a day or two at the most, the reading public is aroused with such combined emotions as indignation, pity for the victim, and hatred for the accused. Nearly everyone cries aloud for blood, an eye for an eye, a tooth for a tooth; punishment must be meted out in full measure for the atrocious crime. In all this the public means well, for the feeling demonstrated represents a certain sense of primitive justice, however crude, and an attempt to express the necessity for safeguarding human life. The most kindly and benevolently minded individuals at this time demand the extreme penalty of the law. Religious and irreligious people alike express the same opinions: Blood must be had and the crime paid for in full, the criminal exterminated, and potential criminals deterred through fear. About such a crime nearly everyone has a very definite opinion, and each demands his right to express it, without much regard for any facts except those stated by the newspapers.

In most instances the criminal is tried and convicted by the public long before the time-honored, time-consuming, antiquated procedures of our criminal courts have dragged out their wearisome and extravagant lengths. A few rather unscientific but sympathetically inclined persons express a righteous horror of capital punishment merely as a general principle and demand its abolishment. But neither this small class nor the larger one, claiming the vast majority, who always demand quick and certain retribution, possess any real understanding of the relation of crime to the make-up of the criminal himself, and the effects of punishment, or the prevention of similar offenses.

---

[1] Reprinted from *Crime, abnormal minds and the law*, 1923, pages 7–20, with the permission of the authors and the Bobbs-Merrill Company, publishers.

Hardly anyone knows that about two per cent of the community is constantly criminal the world over, and that no matter what we do, no appreciable effect has ever been produced upon this average of criminality. Very few know or seem to care to learn, that the theory of deterrence through fear of legal consequences has never had any considerable effect upon the number of crimes committed; yet such are the plain and easily demonstrable facts.

Whenever it happens that the accused is socially highly connected, no end of publicity is given the case by the papers of every city, and the highest legal talent is engaged at a cost of many thousands of dollars. But, for all results obtained, no greater real progress is made in the solution of the social problem of crime than in the instance of the most degraded social outcast. Crimes continue unabated, courts remain as ever unchanged, true to their traditional forms, and society is neither improved nor enlightened by the whole dismal procedure.

Certain definite, inevitable social and biological laws underlie crime, laws about as easily understood as any other laws of science, but laws which, so far as the public is concerned, will unfortunately pass unobserved and unheeded until a social conscience is awakened. When this period of awakened social conscience will come, no one knows, but certainly at no early date from all present indications. Chief Justice Harry Olsen of the Municipal Court of Chicago has said:

> The static character of criminal statistics in relation to population the world over; the fact that the criminal age at which first commitments occur appears early, when responsibilities come; that this age ranges, in the main, from sixteen to twenty-four years; and that about two per cent of the population are everywhere charged with crime, always impressed me as significant facts pointing to something inherently defective in the race. The investigations and researches of the alienist and the psychologist tend strongly to confirm this belief. . . .
>
> Medical science has advanced, but the law has lagged behind. Our judges, unlike those of England, for example, are professionally untrained for their particular positions as a rule. They have little knowledge of psychology, sociology, anthropology, or the significance of criminal statistics, and, if we were to judge solely by the legal test for insanity prevalent in most of our states, the medical profession is greatly in advance of the legal profession.
>
> We are beginning to understand that the unrelenting and retributive idea

> of "an eye for an eye" has no application to the irresponsible. The idea of punishment for a deed presupposes responsibility. We are learning that many of the criminal insane and feeble-minded on whom legal punishment has been inflicted in our courts were not fully responsible and their punishment did not work their reformation.

These words from such an eminent jurist as Justice Olsen make it plain that courts must begin to take practical cognizance of the fact that our laws presuppose responsibility, that they were made for normal minds, but that as a matter of fact they are constantly and usually applied indiscriminately to irresponsible, abnormal individuals, as often as, or oftener than to those who are normal, except in those rather rare instances where insanity, as interpreted by the law, is so evident that no ordinary jury could fail to recognize it.

Our criminal laws in the main remain unchanged, while biological, medical, and social sciences constantly advance. This is made clear when we stop to consider that while insanity, proved to be present at the time of a criminal act, may be considered as a mitigation of the crime, provided that the individual "did not know the difference between *right and wrong*," yet our laws in most states make no provision for the recognition of *feeble-mindedness* as an equal excuse for abnormal behavior. Incidentally, few people have any understanding of the significance of feeble-mindedness or of its frequent occurrence everywhere in society, and the lack of knowledge of this plain fact is about as evident among jurists as anywhere else.

A recent California murder case presents a clear example of a defective mentality in relation to a criminal act, and the publicity which this case has received makes it worth while to direct attention to the necessity for reform in our criminal procedures, social investigations, and educational methods.

In the early morning hours a young man drove up to the central police station in Los Angeles, knocked at the door of the desk sergeant, was admitted, and, while chewing an unlighted cigar, calmly and unemotionally admitted that he had killed his sweetheart and that her body was at that moment in his automobile at the station door. He showed less emotion than the police themselves, hardened as they are by long experience with all sorts of criminal acts. He quietly telephoned his employer what he had done and then recited the details of the crime to the night newspaper reporters.

On a lonely road some few miles distant from Los Angeles, his fiancée had suddenly refused to marry him on the following day as had previously been arranged between them. She had decided, so she had told him, upon a criminal operation and would have nothing more to do with him. A quarrel resulted, and in the defendant's words, "she had a sort of fit, flew off the handle, and abused me." The result of it all was that after vainly attempting to quiet the girl, the defendant lost control of himself, drew a revolver from the holster in the pocket of the machine, shot the girl, and then drove aimlessly about for several hours undetermined whether to take her to a hospital or surrender himself to the police.

His confession was childish in the extreme, no attempt was made to avoid responsibility or to shield himself, which a criminal of normal mind might easily have done through the claim of suicide or accident. His responses were short, disconnected, and obtained only through the continued efforts and suggestions of the reporters. He was quite unable to present any consecutive account of his actions and, in the words of one of the reporters, was the least concerned and affected person present in the room.

In a sworn deposition covering four hundred and fifty typewritten pages and taken from forty persons who had known him, including his colored nurse, his aunt, his teachers, his various employers, his home associates and friends, his colonel in the army on the Mexican border, his sergeant, several army privates, and his last employer in Los Angeles, it was perfectly evident to any expert in mental disorders that here was a typical history of a high-grade feeble-minded man, one whose intelligence had never passed beyond the eleven-year mental level. But it is a remarkable fact that only a few of these persons recognized that this man was feeble-minded. They considered him slow and peculiar, but the true nature of his trouble was unrecognized because he looked normal and in many ways acted as normal people do.

With unusual opportunities for education in public and private schools he had never been able to learn the use of even simple figures any better than an eight- or nine-year-old child; he could read and write only with great difficulty, and in general his educational ability was less than that of a child in a fourth grade of a public school. As a child he learned to talk and walk at a late period, had always been sickly, and had shown little interest or ability for childish play. Later he had always selected younger children as playmates and even as a young adult had preferred to play with children rather than to associate socially with people of his own age. His temperament had always been peculiar in the extreme, giving evidence throughout his entire life of what is called "the shut-in type of personality." He was moody, often sullen, disinclined to associate with others, and suspicious. In general his behavior had always been that of an individual afflicted with an unsound mind.

From the time of his experience in the army on the Mexican border, where he had been unable to learn any army duties except that of hostler, and up to the time of his arrest, he had shown plain evidences of delusions of a mild character mostly related to ideas of persecution. Taking all of these facts into consideration it seemed clear to the experts for the defense that this man was not only feeble-minded but insane, or at least possessed the dementia praecox type of make-up.

His history in employment was typical of the feeble-minded — never holding a job long, drifting along from place to place and from city to city, never doing anything well, and always employed at unskilled labor. He read nothing but headlines in newspapers, mostly in the sporting section, had never read a book through in his life, had no special interests of any sort except in the care and use of horses, in which he had a real but rather childish enthusiasm.

He possessed no initiative and could never be depended upon for anything requiring any degree of responsibility. Any specialist in mental defects would unhesitatingly diagnose such a case as that of a moron, or feeble-minded, irresponsible individual, on the history of the case alone; and even without a personal interview, most specialists would also regard him as insane or highly unbalanced. As a matter of fact he scored less than twelve years on the Binet-Simon intelligence scale. By the army intelligence scale by which nearly two million of our soldiers were classified in intelligence during the war, and in the results of which the army placed great reliance, he scored only 32 as compared with 77 which the average enlisted private makes, 50 which the average child will make on the same test in the fifth grade of a public school, and 135 to 175 which most officers make.

In this case the alienists on both sides, five in all, agreed that this man was a moron, with intelligence permanently arrested at about the eleven-year level, while the experts for the defense declared him insane as well as feeble-minded. The prosecution held that a moron knows the difference between right and wrong and that, as the evidence of guilt was clear and insanity not proved, the accused should suffer the death penalty.

The entire trial hinged upon the question of knowledge of right and wrong and the presence of insanity at the time of the act committed. Even if he had no greater intelligence than that of a seven-year-old child and were not insane, the district attorney held that he must pay the extreme penalty of the law. In other words, most of our courts permit us to hang children of seven years; for no matter what age a man may be, if his mind is that of a child, *he is a child* as far as responsibility goes.

The defendant was convicted of second-degree murder by the jury, who claimed that he was responsible for his act and capable of understanding the difference between right and wrong. Now the knowledge of right and wrong is no real test of responsibility; what is a test, is the ability to *act* on such knowledge. Even young children possess the knowledge of right and wrong, but no reasonable person expects them always to act responsibly. Animals possess such knowledge to some degree, at least by training. The feeble-minded, except the lowest of them, all have some knowledge of right and wrong; but in a true sense they do not possess such knowledge, because moral responsibility is based on judgment, and judgment in the feeble-minded is not much developed. Accordingly, the feeble-minded cannot be expected to use judgment in respect to moral acts. As a matter of fact, psychologists now recognize that the moral and ethical sense is not much developed until after twelve years of age, although no one denies that children from a very early age possess a theoretical knowledge of right and wrong. The use of the term "right and wrong" in a legal sense is an absolute misnomer. The legal test is, therefore, absurd on the face of it, because it does not take into consideration the inability to act on a theoretical knowledge of right and wrong. It dates back to times when the mechanisms of human behavior were little understood.

The sole test of moral responsibility should be passed upon by unprejudiced experts selected to represent neither one side nor the other and required to investigate and report in an impartial manner upon the facts as they exist. It has been proposed that a jury and a court should pass only upon the facts of the crime, and that a special commission of experts should fix the *treatment*, whether this be death, imprisonment, permanent segregation, or hospital care. This would be in line with scientific procedure, but it appears to be too radical a measure for our legislators to comprehend. Punishment as such has little or no place in the consideration at all — a point still ungrasped by the public at large.

Criminals in a large proportion of cases are people with defective minds, and the question of moral responsibility can never be settled by a jury or a judge, for this is a matter for expert diagnosis as much as or more than the most complicated case of physical disease. No court would pass upon an obscure case of bodily ailment; yet courts every day do pass judgment without hesitation upon far greater questions of mental disorder and responsibility.

Many good people hold the theory that degenerates are better out of the world anyway, and would apply the Spartan treatment of death. Several eminent judges have expressed this opinion to the writers, as well as some clergymen and other citizens. But such a person does not stop to consider what his decision would be if the accused were a member of his own family. The destruction of the unfit is excellent biology, but very bad ethics, and the entire attitude of most of those who hold such theories is strangely inconsistent with their other views of life. Society preserves the degenerates by encouraging, or at least permitting, the mating of the unfit; society, meaning all of us, interests itself not at all in the discovery of the potential criminal before he commits a criminal act. Yet such potential antisocial individuals are today recognizable in early life, and particularly in our public schools, and means are now at hand for their scientific diagnosis.

Society permits the feeble of intelligence, the mildly insane, the dangerous epileptic, and the great hosts of psychopaths, or persons with highly unbalanced personalities who are neither insane nor feeble-minded but yet cause as much trouble as any other class of defectives, to mingle freely in life, marry, engage in occupations in which they are sure to fail, become discouraged, and drift into pauperism, prostitution, alcoholism, or hoboism, or become political cranks and assassins and fall into a number of other dangerous misfit situations, all without hindrance or protection. But once one of these unfortunates commits an overt act, society calls for blood, becomes righteously indignant, and claims the right to protect itself by destroying the lives which society itself never protected, or in any way attempted to control. This strange fallacy in reason is everywhere present, and is found as often among the highly educated as among the ignorant.

In our courts, jails, penitentiaries, and the like, scarcely any better forms of reasoning exist. From 25 to 50 per cent of the inmates of our jails and other penal institutions, as we well know, are feeble-minded, still another 10 per cent or more are epileptic and highly unbalanced mentally, at least 20 per cent are psychopaths, leaving a possible 20 to 45 per cent of reasonably normal people in these institutions. These are plain facts which any prison expert will in the main verify. Yet today only a few cities maintain laboratories for the investigation of abnormal behavior; only a few prisons, courts, or jails employ experts for the study of their inmates. Meanwhile the wave of criminality constantly surges on, unhindered and unchanged, and since the termination of the war, with its changed social conditions, has constantly risen higher and higher.[1]

The causes and means of prevention or control get almost no attention or support from those whose business is to deal with criminals. Every year millions of dollars are wasted on the attempt to prevent crime by useless, worn-out methods; every year criminals are arrested, fined, jailed, or otherwise punished, and all without appreciable results, for the plain reason that the character, responsibility, and social status of the criminal remain unchanged. As well punish a man with typhoid fever with a jail sentence as to punish a defective criminal; for in the one case we can expect just as good results as in the other. But a typhoid case must be controlled; the well must be protected against the infection; the sick man must be treated; and, if possible, the source of the typhoid infection must be remedied. Exactly the same is true of the defective:

---

[1] The situation in the United States so far as crimes of violence are concerned is worse than in any other civilized country. During the last ten years burglary has increased 1,200 per cent. — Committee of the American Bar Association, 1922.

He must be controlled, others must be protected from him, and the source of his defect must be discovered and, so far as possible, eliminated.

The case above referred to had a defective ancestry; he came from a tainted stock, and poor seed always yields a poor fruitage. His defects were obvious in his school life, his early industrial life, his army life, and his social life; yet no one offered a helping hand or any restraint. When emotional stress and temptation became great enough, his weak mind crumpled and murder resulted. Charles Oxman, De Witt, Bundy, Louis Fortin, Harris the Negro, and a number of other recent murderers, all in California, were all mental defectives of one sort or another. Oxman, De Witt, and Fortin were all feeble-minded, with minds less developed than that of a ten-year-old child. Bundy, a high-school boy, was a "moral imbecile." Harris was an epileptic and insane man whose criminal tendencies had long been known to the Los Angeles police before his final murderous act. All of these men were hanged. Society never protected them, society never restrained them, society offered no bar to their mating, with its inevitable defective progeny in its wake.

In one hundred cases of defective delinquents whose cases were studied by Dr. Victor Anderson, in Boston, "all showed sufficient deviation in childhood to have warranted an early recognition of their condition and the institution of suitable remedial measures to prevent careers that with reasonable certainty could have been prevented. This particular group was arrested 1,825 times, a not unusual record in such cases."

The futility of employing measures intended for those capable of profiting by experience is shown by the inability of most criminals to profit by what is done for them, and the unfailing certainty with which they return to be handled again and again.

In a study of 858 delinquents taken from the Municipal Court of Boston, 231 were found feeble-minded, 104 psychopathic, 58 insane, 31 epileptic and unbalanced. And all but 148 of the remainder were defective in one way or another. Less than 20 per cent could be considered in any sense normal individuals.

Among 185 juvenile delinquents recently examined by the writers in the Los Angeles Juvenile Court, only 38 per cent possessed normal minds, while 33 per cent were definitely feeble-minded and permanently arrested with a mental development less than that of a child of twelve years and averaging about ten; yet all of these boys were from thirteen to eighteen years of age. All but 38 per cent were mentally defective in one way or another, and none of these defective children could reasonably be considered morally responsible boys.

Figures such as these are easily duplicated in any court in the country, in any penal institution, or anywhere else where delinquents are scientifically studied by mental experts.

The reader at this time may fairly ask the practical question, What is the remedy for the state of affairs here declared to exist? The answer is a difficult one and can be given with only a partial degree of satisfaction. If criminals and delinquents have for centuries been misunderstood and left in the main uncured and unreformed, it is scarcely fair to demand an immediate solution to such an age-long problem. In some measure, however, the question may be answered.

Granting that many and perhaps the majority of our serious crimes are committed by persons with minds more or less abnormal, and that they are, therefore, more or less irresponsible in their conduct, that because of their defects they are unable to compete on equal terms in the world with their fellows, and that they consequently fall easily into criminal ways, it follows that society must recognize this class of people early in life and properly control them before criminal careers develop, for it is an established fact that over 90 per cent of adult criminals begin such careers as juvenile delinquents. Defective children in our schools must be recognized and placed where they will succeed best within their own limitations, for it is from this class that many criminals and delinquents are recruited. At present very little attempt is made either to recognize these children or to give them any special training adapted to their needs when they are recognized.

Dr. Goddard suggests the real solution to this problem when he says, in substance, that the feeble-minded child who is of sufficient mentality to go to the public school not only can but will amount to something when properly trained. But the seriousness of the situation lies in the fact that, unless the child is very carefully and wisely trained, it will amount to a criminal, a thief, a prostitute, a drunkard, or some other kind of anti-social being. These facts make clear, says Dr. Goddard, the special problem of the public school in the case of a dull or backward child. These children, says Dr. Goddard, lack the power of abstract thought. They cannot deal with abstractions, hence they can never develop moral principles as such. Fortunately there is one power that comes to save the day — *the power of habit.* These children, if trained in fixed habits of health, activity, and work, usually become happy, harmless, and even useful persons. Neither the child nor his family need be reminded that he is a defective. We do not say what he *cannot do*, but we constantly impress the fact that there are things that he *can do* and we train him toward these things.

This, of course, means that our schools must abandon the idea of attempting to train these children as if they were *normal.* The training they need is of a practical nature, largely manual and sometimes vocational, with the attempt to make them, if possible, to some degree self-supporting in life. Unless this is done, they drift from one sort of inefficiency to another and then almost inevitably enter crime or some other form of degeneracy.

For those who have already passed childhood untrained to meet life, other methods must be pursued. Among these we include sterilization to prevent the sure inheritance by their legitimate, or more often illegitimate offspring, of their own defect; segregation on farm or industrial colonies; or employment in life under constant supervision of some sort. What is absolutely necessary is the clear recognition of the fact that the individual is defective, irresponsible under ordinary conditions, and fated to fail under present unfair methods.

When the criminal is of normal mind, society owes it to him and to itself to correct his distorted viewpoint and to restore him as rapidly as possible to useful citizenship. Revenge has no place in the scheme at all, and punishment little, if any. The whole thing is a matter of education.

The general reader might possibly gather from what has been said that criminologists favor an easy sentimental attitude toward the offender; that their indulgent view would result in endangering the community to the uncontrolled acts of the criminal to far greater extent than under the present legal and social conditions which have been criticized. Once and for all let us correct this misconception. Criminologists, while not deficient in sympathy, far from maintaining an indulgent attitude, would insist that our laws, while they must be more justly and intelligently administered, should protect society to a far greater extent than they do at present. In many instances they would insist that even minor crimes often point to mental conditions which make life segregation absolutely necessary. Where the law would impose only a mild punishment, a fine, or a short sentence, criminal experts often recognize incurable, uncontrollable, irresponsible conditions. Where the court sees only criminal behavior, in which it is now assumed that punishment will act as a cure or as a deterrent to similar crimes in the future, the criminologist looks to the underlying defect and seeks to remove or permanently control it.

2. THE PREVENTION OF CRIME[1]

By Edwin J. Cooley

Chief Probation Officer, Court of General Sessions, New York City

Under the heat and fury of the prevailing crime situation, there is being incubated in our great metropolitan areas the germ of an active public interest in delinquency. Properly nurtured and directed, it may develop into a dynamic force capable of magnificent social strides and, on the other hand, if subjected to misguidance, may result in irreparable harm.

Unfortunately, however, this public zeal has been brought to bear exclusively on the punitive measures to be adopted against the authors of the alleged crime wave, and little attention is being paid to those who, five, ten, or twenty years hence will cohere in a sea of misdeeds to form the crest and trough of the crime wave of another generation. Surely, to rest a fascinated eye upon the spectacular forms of crime which hold the current stage without seeking the causes which make these offenders act, is scarcely calculated to disclose to the spectators the motivations of their delinquency.

True it is that the present offender must be dealt with here and now. And this may be most happily done by the utilization of measures dictated by a social concept of the criminal as an individual rather than by the futile mass and objective methods fostered by fear or hatred.

But whether the measures adopted by society for the repression of today's crime be scientific or legalistic, and whether the effort be guided by the old or new attitude toward the criminal, the permanency of preventive results achieved will be negligible. For no matter how sweeping our success in combating the criminal now engaging our attention, our efforts will in no wise check the battalions of delinquents marching out of the future. As someone has well said, "If we incarcerate every known criminal tonight, there will be new crimes and new offenders tomorrow."

---

[1] Abridged and reprinted by permission of the author from *Probation and delinquency*, 1927, pages 389–408: published under the auspices of the Catholic Charities of the Archdiocese of New York; Thomas Nelson and Sons, New York, publishers.

Treatment compared with prevention

As imperative, then, as is success in crime treatment, it is overshadowed by the desirability of effecting crime prevention. Directly this is comprehended in a concrete, everyday fashion by the general public, directly the public becomes aware that criminals are not the creatures either of one condition determining their acts or of an inherited evil genius enthroned within them, the first great step will have been made toward the ultimate effacement of crime from the social order.

It is not intended to intimate that a public attitude sympathetic to the concept that delinquents are largely made by training and environment, just as non-delinquents are, will result in the immediate prevention of all crime. Such a romantic consequence of a socialized public opinion will be prophesied only by those whose experience with social reforms has been exceedingly limited.

Our knowledge of human behavior is too incomplete, and our explanation of human conduct is too faulty, to permit such glowing predictions. An enlightened public opinion, however, will do much to accelerate the scientific study of these subjects and will no doubt bring about the establishment of laboratories and foundations that will be primarily concerned with criminality and its genesis. Thus, a sane appreciation of behavior problems and the intricacies of character formation responsible for them will be at hand, and subsequent steps may then intelligently be taken to control delinquency effectively.

There is too another desirable possibility in the development of an enlightened public opinion, and that is, the frowning down by a socialized public attitude of those panacea mongers who, by their activities, becloud the pertinent facts of the situation. A problem as great and as vital as that of crime should and will be accorded saner treatment than it is now receiving and will demand the attention and interest of all citizens if effective preventive measures are to be instituted.

Limitations of preventive knowledge

Most of our knowledge in the science of crime prevention is negative in character. Past experience gained through imposing harsh penalties on existent criminals, extending the application of capital punishment, and transporting delinquents has taught us how crime may not be prevented, but the positive preventive knowledge in our possession is rather meager. The findings of psychiatry, psychology, and medicine, as related to conduct, are yet inadequate. They have not as yet been thoroughly demonstrated, established, and embodied in readily accessible forms. The mist of doubt and uncertainty has, however, been successfully dispelled at various points, and there is reason to believe that increased skill and the passage of time will clarify behavior situations that are now poorly understood. However, when all is said and done, there always will be an irreducible minimum of wrongdoing, as long as men are what they are. Yet we must slacken in no least way our efforts to prevent crime, for if we do, then the irreducible minimum will grow to a tidal wave.

The widespread carelessness as to the processes of character formation may be compared to the medical ignorance that at one time surrounded the causative agencies of malaria. Beyond the fact that wide areas were ravaged by the disease, and that it frequently assumed malignant forms, little was known. With scientific application, however, the problem soon became less complex, and the sources and carriers of the disease were discovered, and absolute measures of prevention were made possible. It was no longer known merely that the subject had the disease, but also how it was acquired, how it might be cured, and how others might be immunized.

In much the same manner our examination into character formation, especially of the delinquent, has shown us where the germs of our social malady are to be found. It is easy to see the post-formation entity and have some inkling of the processes by which it developed. But what we need is a more carefully ascertained and more generally applied methodology of character analysis and synthesis which will take cognizance of every affecting force and its result. Character deterioration may be thus prevented or detected in its incipiency and restored to normality. Parents, teachers, and social workers of all kinds will then understand better the principles of genesis and growth of character, and will be in a better position to provide adequately for prevention, immunization, and treatment.

Our present failure to detect the malforming character before it is fully matured constitutes the greatest obstacle in the way of crime prevention and, at the same time, the greatest challenge to our civilization. There is a task — to go beyond and around those theories which have conceived of the human character as inscrutable and incomprehensible, and to learn the exact method of its growth and functioning. This is a task of large magnitude, for we are dealing with complex, variously motivated human beings, no two of whom are alike.

However, patient examination into the realms of behavior teaches us that there, as in the physical sciences, the principle of cause and effect is a fundamental notion. There is possible too, in a general way, a reasonable basis of predictability, though on account of the presence of freedom of choice such predictability can never be absolute.

We appreciate that there is some causal connection between hereditary and environmental factors and certain qualities of character and personality. We do not, however, know the relative weight of one circumstance of environment in molding the character as compared with another. Nor do we understand with any degree of certainty the exact part played in the process of character formation by the inherited tendencies of the individual. Our analyses to date have been quantitative rather than qualitative in their findings.

Any programme, then, for the prevention of delinquency can be sketched only in broad, sweeping outlines. We must always look to a more intensive study of individuals to give us supplementary details.

It is obvious at the very outset that no blanket plan of prevention can succeed any more than can a unilateral theory of causation be found, or a uniform programme of treatment be formulated. Any workable rationale of crime prevention that may be promulgated must have as its salient feature adaptability to the needs of the individual. We must be on our guard constantly not only that the weak may not fall, but that the strong may not revolt. We must provide recreation, education, and, in a sense, a constructive environment for those who are to be restrained from delinquent careers; we must make a worth while life worth while to those whom we wish to live it, and must give them insight and power to realize their own potentialities. To attain these ends, it is essential that we discover the individual in his true psychological and sociological aspects, and for this a popularization and amplification of our facilities for examining semi-delinquents and non-delinquents mentally, physically, and socially is necessary.

Moreover, we should go beyond the present and concern ourselves as far as possible with the prenatal life of the being with whom we are later to come in contact. Our methods must be thoroughly scientific, and it is imperative that a questioning attitude be adopted and maintained as regards even the minutest detail of the forces that seem to bear on character formation. A programme of prevention, then, as it seems to us, must be concerned with social work, prenatal, preschool, and school life, psychology and psychiatry, economic factors, recreational planning, socialization of fundamental institutions, the law, and religion.

Prevention through family social work

To render more available to the cause of crime prevention the great potential and actual energies of social work, there are necessary only an expansion and an intensification of the services now at our disposal.

Countless families year after year come into contact with social agencies. Of the cases investigated by the Catholic Charities Probation Bureau, 60 per cent had come previously to the attention of one or several social agencies. With greater resources, social agencies whose first contact is with pre-delinquents may prevent the development of the delinquency. Social agencies sometimes fail to halt incipient delinquents before they reach the brink of crime because they lack the money and the staff to carry on with maladjusted families until they have truly reached the ideal envisioned by the social worker — that permanency of adjustment, that possession of the capacity for useful social life, which enables the individual and the family to go on without outside aid.

It is desirable that families in which there are to be seen outcroppings of maladjustment should have the benefit of prolonged contact with constructive social forces. To meet this need, we must have more social agencies doing preventive work, more trained workers, and more resources for the task.

Thus equipped, social workers will be able to give added emphasis to the preventive aspects of their work. They will be able to achieve their objective of permanency of results, they will become so organized that they will reach out for problems through community surveys, and their help will not be limited, as it now too often is, to the applicants who recognize only specific or immediate needs of their own. When the community becomes fully aware of the needs and opportunities of social work, and adequate resources are made available for the great task of prevention, we shall have gone far toward checking criminality at its source.

Our thesis, then, is the strengthening of the forces of social work. By so doing, we can study in a thorough and scientific way the daily lives of such persons as those who, under our present system, receive individual diagnosis and examination by psychologists and criminologists only after they have come into conflict with the law. We should be in a position also to follow step by step the individual's evolution in the social order, and should be able to assist him over difficult passages, to offer advice at crucial stages, or to ferret out the causes and cures of an impending or incipient maladjustment. We should be looking at the individual not in retrospect as we do today when he taxes our best methods of character adjustment, but we should be looking forward with him at various periods of his life and should be engaged in the much more profitable occupation of character syntheses.

With a broader application of the services of social organizations, and with an extension of the facilities of the clinics now doing much excellent work, it would be possible to continue our present efforts in the field of prenatal care on a larger scale. It would be necessary only that the things we are doing now in a restricted way be done in a manner that would bring the assistance of our clinics to a greater proportion of the community at large. To achieve this result, the interest of the medical profession must be developed to a greater degree, and general practitioners must study their patients more intently to understand the psychological, social, and physical forces which have a bearing upon pregnancy. Cases other than normal might thus be noted and referred to specialists and clinics, where proper records may be kept and continued scientific observation may be had.

Going further, our present attempts to impart to the mother of the child after birth a thorough knowledge of its care might be so supplemented that the early development of the child would receive constructive supervision. Children who show delinquent trends and unsocial personality traits should be given skilled care from an early age. Parents should be educated to the importance of the preschool period; it is then that the basis of character and personality peculiarities is first laid down.

Periodic examinations during the preschool stages of the child's life will go far to detect, at an early age, those who are unfitted for the normal ways of life as well as those who are of average or superior mentality or physical caliber. Each child must be approached individually as a unique human being, with a peculiar constitution, peculiar difficulties, and peculiar problems of his own. The preventive values of early diagnosis and treatment are obvious. Were this plan worked out on a large scale, each child would be prepared from the outset for the experiences he is about to encounter in school life.

Care must be taken to socialize the personality of children as they develop. Gillin emphasizes the importance of this phase of the child's life in these words:

> Studies in child psychology and the explorations of the psychoanalyst have revealed that many antisocial attitudes have their roots in early childhood. Repressions often begin then which later find expression in crime. Grudges are begotten which determine the whole future career. Attitudes toward authority, whether it be that of parents, the law, school authorities, or what not, often are begotten by the experiences of children at an early age.

Thus it is manifestly important that children have contact with understanding personalities who are able to guide their groping spirits into proper adjustment in a new world.

In our programme for the prevention of delinquency the emphasis on work with the child is on the safeguarding and upbuilding of normal children, the socializing of unstable children, and the training or segregation of defective children. Our interest in the abnormal is secondary to our interest in the normal, who not only constitute the vast majority of our youth, but many of whom also are, in later life, our delinquents.

Through clinical study, individual diagnosis, and adjustment of problems, a greater understanding of the normal child can be arrived at, and he can be developed to the limit of his potentialities and brought to a fuller social life.

When the public generally is educated to the belief that the mental and physical health of their children is a matter of vital importance not only to themselves but to the developing child, it is probable that more sympathetic coöperation of families might be had with those agencies which are interested in child guidance.

Prevention in the school

Accepted authorities in the field of education support the proposition that a radical change in the school system is imperative if we are wisely to prepare the growing child for his independent life in the community.

In the late Charles W. Eliot's opinion:

> In the ideal democratic school, no two children would follow the same course of study or have the same tasks, except that they would all need to learn the use of elementary tools of education . . . the different children would hardly have any identical needs . . . the perception or discovery of the individual gift or capacity would often be effected in the elementary school, and the making of these discoveries should be held one of the most important parts of the teacher's work.

Upon the entrance of the child to our schools there might be submitted to the school authorities a record of the developmental history and preschool life. On the basis of classification of the individual, the course of study should be so adapted to individual needs that the proper physical, mental, and vocational training is offered every trainable child, despite his mental or physical handicaps. A beginning in the realization of individuality of education has been arrived at in those school systems which have provided rapid advancement classes, classes for the mean of intelligence, retarded, special, and handiwork classes.

During the pre-adolescent stages of his life, the child is normally under the influence of the school, and it is here that serious dangers are to be faced, and the most delicate adjustments are to be made, if we are not to fail in our efforts toward the prevention of delinquency. Although rapid strides in the development of clinical service in our schools have been made during the past few years, and although the attention of our best educators has been turned to the problem of individualizing as far as possible the existent mass methods of school instruction, we are yet hardly within shouting distance of our ideal in the school system.

The keynote of modern educational thought is individuality, but to the science of childhood guidance much can be added, and there are as yet all too few specialists in the treatment of childhood problems. During the pre-adolescent period, when all the physical and mental energies of a child are moving with rapidity to the point of adolescence, there is an imperative need for constructive guidance and for calm and intelligent people to explain the child to himself and to explain to him the changing world. Here there are conflicts to be removed, doubts to be effaced, and questions to be answered which experience has taught us can be neglected only with dire results. At this point our clinical service for the mental and physical examination of the child must be expanded and developed to a point of the highest efficiency. Recommendations based on the findings of careful diagnosis must be followed out intelligently and sympathetically if we are to assist the growing child over the danger spots on the road from pre-adolescence to adolescence.

Examination of children should be conducted according to a rational standard plan. It seems to us imperative as a minimum standard that every child be studied and examined as to the condition of health, mental aptitudes, and temperamental traits upon entering school and should be reëxamined annually until the fifth grade at least has been attained. School department bureaus in charge of a social worker, for the treatment of truancy, misconduct, and behavior maladjustments developing in school life should be an integral part of our educational system. Most of all, perhaps, teachers should be trained and encouraged to observe and detect early manifestations of delinquent conduct.

The fact that there is a prohibition against the teaching of a definite faith in the public schools imposes a further obligation upon teachers, for as Archbishop Spalding has said, "The fact that religious instruction is excluded makes it all the more necessary that humanizing and ethical aims should be kept constantly in view."

A larger number of visiting teachers also must be supplied to smooth over difficulties and conflicts arising in the lives of these plastic pre-adolescent children from either school or home conditions.

Adolescence still finds the child under the influence of our schools, either in the latter years of the grade schools, the lower classes in high schools, or in attendance periodically at our continuation schools. Unless the foundations of good character and right living have been laid down in the child during his formative years, the educational authorities will not be able to meet the task which is then presented to them.

During this period, the individual in whom the proper attitude has been developed by his teachers will seek advice and counsel during hours at school and will bring to his preceptors for solution the problems that trouble him. The youth in his teens is frequently making at this time his first contact with the world of industry in after-school or part-time employment. He is forming new relationships and is discovering in his everyday contacts with life new types of people and new standards of conduct.

It is at this critical time that our energies should be expended to help the individual through the first stages of adolescence, which make more imperative his need of understanding, sympathy, and constructive guidance. We have taken the child in our schools and have returned him to the world at the threshold of manhood. It will be by his subsequent life that our success or failure is determined. The school, properly considered, is not merely an instrument for the education of an individual, but it is also a social factor under the influence of which the family in general may be educated and may be brought into contact with all the best features of the community.

Delinquency in children cannot be walled off and set apart. It is integrally associated with the welfare of all children. Crime is not unique. It touches every side of social work; not only the policeman and the children's court but the pastor, the teacher, the school visitor, the family case worker, the probation officer — all who come in contact with the child should work hand in hand with all the forces that seek to better the life and opportunity of the child.

Recreational planning for prevention

To supplement the work of the schools and social organizations, and as something subsidiary to them, there should be in any well-constructed plan of crime prevention some provision for the improvement and development of the recreational facilities of the community, outlets for youths' leisure times.

At the present time in our congested cities play places are all too few, and instead of supervised recreation, whereby might be brought out the valuable personality traits of children and youths, we find a condition which permits of few recreational outlets other than the streets and commercialized amusements. In our large cities there is great need for more playgrounds and more places where children, after school hours, and during the day in summertime, might find an opportunity to indulge in sports and games of a wholesome nature. Through the team play and fairness which are an integral part of the spirit of the playground activities, the child who finds a place in which to play soon comes to adopt almost unconsciously an attitude of fairness toward others and appreciates the values of unselfishness and coöperation.

"We have let the delinquent," writes Dr. Kirchwey, "run wild in the streets and alleys of our great cities during the impressionable years of childhood and early youth, when life is still the great adventure." So long as we permit our children to roam aimlessly about the streets, to gather in unsupervised pool rooms and questionable resorts, and to be open to the approach of undesirables of every sort, we shall have a condition whose relation to delinquency is patent. Leisure hours offer the greatest opportunities for the cultivation of those habits and pursuits which end in delinquency. It is, therefore, essential that we make adequate provisions for filling the leisure time of the individual with constructive interest. More playgrounds and recreation centers for the young and community centers with more elaborate amusement facilities for adults must be provided.

With the complexity of our present civilization, neighborhood and community spirit has been to a great extent lost, and in our large cities natural and spontaneous group amusements and recreations have become a thing of the past. The art of providing one's own amusement and amusement for the group with which the individual is allied has given way almost entirely to the practice of seeking commercialized recreation. In children, the group instincts of play are strong. With the adult, however, we must endeavor to have a larger and larger group see the wisdom and value of wholesome amusements and attempt to supply them by community action. As part of the social plan and by the force of public opinion, we should endeavor also to develop in commercial amusements that spirit of wholesome entertainment which they too frequently lack.

The danger of amusements of questionable character, however, is not so much in their direct contact with the adult who is properly equipped to withstand their influences — though here too harm is done — but because of the effect upon children and youths of the community who are as yet at a formative and impressionable stage. Somehow, the indecent and degrading things of life have a discouraging manner of filtering through our population until they reach those whom they may do the most harm.

The work of recreational planning for children can best be accomplished by a state children's bureau created for the purpose, which may function independently or as an arm of a larger state department whose business it should be to foster in every community in the state a vital interest and participation in programmes for the development of health, play, and work activities for children.

Prevention through law

Our laws and our courts have not kept pace with advanced knowledge of behavior and conduct. The fault is more inertia than ignorance. If we brought into the law and its administration all that we know of the social sciences we could go far toward the prevention of crime.

With a new perspective on crime and criminals, we should thoroughly overhaul our present legal system and bring to its administration a social and scientific procedure and an organization of institutions and forces which would prepare the way for an enlightened understanding and treatment of delinquency and its ultimate reduction.

Our children's courts should be strengthened, wider powers conferred, if necessary, and plans of coöperation adopted, which would go far toward bringing the children's court into closer association with the home, the clinic, and the school. With the highest type of personnel, adequate resources, and modern equipment, it may eventually attain that often sought but rarely found understanding of the human child. Its probation work, moreover, might be intensely studied, and more and better equipment might be provided which would give this indispensable arm of the court new vigor and would make its efforts more certain of success. The protection by law of children from exploitation in industry and from participation in occupations which are deleterious, both from the moral and the physical standpoint, is an important duty of the community.

There might be brought about also a broader application of the Wayward Minor Law and a wider promulgation of it, so that its existence and benefits might be generally known throughout the community. The effect of being able to bring young semi-delinquents under supervision for admonition, guidance, or correction with the power of the law behind the procedure, is a most salutary one upon that group of youths between sixteen and twenty-one years whose idleness, bad associates, and evil habits are bringing them to the brink of crime.

Housing laws, sanitary laws, and the statutes regulating amusements, all relate to matters which are of paramount importance to the state and should continue to receive earnest, scholarly consideration. As has been frequently indicated, congested living conditions, unsanitary tenements, and unsupervised places of amusement have a direct or indirect bearing on delinquency. Is it not logical, then, that we should concern ourselves with these problems and endeavor through social and legal action to better, as far as possible, the material factors in the environment of the individual who, under their influence, may become delinquent? Should the individual embark upon a career of crime, we deal with him by laws that punish, and then, sometimes for the first time apparently, he becomes an object of concern to the state. The humanity, the economy, and the social wisdom of concerning ourselves with the individual before he becomes a menace to life and property are manifest.

The state and its forces exist for the individual, and not the individual for the state. The home, the playground, the neighborhood, schools, courts, business, and politics exist to advance the interests of the community and the individual. Their efficacy must be measured by the influence which they exert upon childhood and youth in the determination of socially useful conduct. When these institutions fail to contribute to the social development of the individual, it should be a social responsibility to modify or reorganize their activities.

Individual and social betterment has not kept pace with material progress. The economic forces of life should not be an end in themselves.

They exist for society and its members. Economic pressure should always be upward and never downward in its effect. It is the imperative duty of every community to aid in stamping out poverty, providing assurance against unemployment, and establishing vocational guidance and industrial training for children, to the end that each citizen may have a larger opportunity for economic security and increased happiness.

In the social advance against crime, it will be necessary to incorporate as part of our educational system provisions for training social workers. Such a plan would provide not only more competent workers, who are sorely needed, but it would bring about also a more enlightened community understanding of the problems and opportunities of social work. More schools of social work also should be established, and greater use should be made of those now in existence. Someone has well said that "no community can afford to blunder along with makeshift social workers, any more than they can employ street-sweepers to build bridges on which their lives depend."

Need of moral education

While undoubtedly considerable numbers among the law-abiding element throughout the country are indifferent to religion, it may be seriously questioned whether the percentage of irreligion is as great in the law-abiding as it is in the delinquent group. The potential delinquent needs the saving grace of religion, the inspiring leadership of the clergy, and the sense of belonging to the parish and the church and of personal responsibility to God more than he needs anything else.

Religion, which has great influence for character building, must be more aggressive in dealing with social evils. The fundamental art of producing a social attitude of mind, a spiritual feeling toward life and its problems can be created only through the church. Religion must attack the great causes of sin in addition to individual sin. Leaders in religion have always recognized their responsibility and have been making valiant efforts to meet it, but religion must be even more dynamic in its activities, more extensive, more intensive, and more militant.

Religion, social service, and economic reform are joining hands today. Religion must continue, to an even greater extent, to express itself in social service, which is but a new name for the spiritual and corporal works of mercy. Social service without religion is arid. Unless religion is a part of it, social service will have little power to reinvigorate wills and make character in the march against crime.

With full appreciation of the contributions of modern workers with delinquents, one must, nevertheless, conclude that modern scientific psychology does not solve entirely the problems of moral education. That many persons who are responsive to religious training can be influenced only superficially by "scientific personality adjustments" may be a statement out of step with the times, but it is justified by experience.

Organized religion is a fundamental instrument for vital character education, and when it fails it presents a problem to consider in any attack upon crime. May we not look to religion to grapple with the problem of crime more vigorously and more effectively? Modern critics of religion do not realize its age-old power.

Conclusion

The problem of crime prevention, as we have seen, is one which demands the serious attention of the best minds and devoted workers of the community. Criminologists, sociologists, social workers, psychiatrists, psychologists, clinicians, and probation officers must continue to increase the scope and raise the standard of their activities.

Science and its discoveries, in the fields both of mental and of physical life, must be brought out of the textbooks and the laboratories and the realms of research and popularized. Knowledge is the property of all the people, and those who are possessed of it must see it as their duty to bring the benefits of their wisdom to those who are in need of it.

From earliest childhood until adolescence, and even during the prenatal life, there should be woven about the individual a network of helpful and constructive influences. Science, the school, the home, the social organizations, the law, and religion must find in the problem of crime prevention a serious challenge. All too frequently, the blame for a delinquent career rests not on the individual as much as on society which permitted the development of delinquent tendencies. When we learn to look forward with the child instead of backward with the adult criminal, we will have made great strides in the prevention of crime.

Summation

An attempt has been made to lay down certain broad principles for the prevention of crime in general, as well as for the development in the child of socially desirable behavior patterns, or the elements of a stable character. These practical conclusions may be summarized as follows:

1. An enlightened public opinion must be developed in order to accelerate the scientific study of human behavior.
2. More foundations that will be concerned primarily with the study of the criminal and criminality are an urgent need.
3. We should undertake the task of learning the processes of the growth and functioning of human character.
4. Any workable rationale of crime prevention must have as its salient feature adaptability to the needs of the individual.
5. More organized and supervised recreation, individualized education, and, in a sense, a constructible environment must be provided for those who are to be restrained from delinquent careers.
6. It is essential that we discover the individual in his true psychological and sociological aspects, and for this a popularization and amplification of our facilities for examining semi-delinquents and non-delinquents mentally, physically, and socially are necessary.
7. Social agencies doing preventive work must be increased and expanded and have more trained workers and more resources for the task.
8. To a greater extent than has heretofore been possible, we should concern ourselves with the prenatal life of our future citizens.
9. Instruction for mothers on matters relating to infant care should embrace many more groups than at present if children are to receive the most intelligent nurture possible.
10. Children who show delinquent trends and unusual personality traits should be given skilled oversight and training from an early age.
11. Periodic examinations for all preschool children should be a definite part of a community programme.
12. On the basis of diagnosis and classification of the child, he should be given a course of study adapted to his individual needs upon

entrance to school, and classifications should be subject to modification and revision, according to the growth and progress of the child.

13. More visiting teachers are a vital need of the day. School department bureaus, in charge of social workers, for the treatment of truancy, misconduct, and behavior maladjustments developing in school life should be instituted.
14. Delinquency should be regarded as just one part of the whole problem of the child, and there should be a larger coöperation between the constructive forces that come into contact with youth.
15. Provisions should be made for the improvement and organized development of the recreational facilities of the community.
16. A state children's bureau should be created for the purpose of fostering active community interest and participation in the development of health, play, and work programmes for children.
17. Laws and courts should be socialized and brought into accord with the modern scientific knowledge of behavior and conduct.
18. Increased protection and opportunity in industry for youth is a problem for aggressive community action.
19. We should have a broader application and a wider promulgation of the Wayward Minor Law.
20. Housing and sanitary laws, the statutes regulating amusements, and ordinances involving the welfare of citizens should be strengthened.
21. The socialization of fundamental institutions, the control of economic conditions, and increased provisions for the training of social workers are necessary auxiliaries in the warfare against crime.
22. Religion must render its influence even more positive and far-reaching by extension and intensification of secular activities and modifications made in the light of modern needs.

3. THE BOBBED-HAIRED BANDIT[1]

An Editorial

For some months now we have been vastly entertained by the bobbed-haired bandit. Knowing nothing about her, we created a perfect story standardized according to the rules laid down by the movies and the short-story magazines. The story had, as the press agents say, everything. It had a flapper and a bandit who baffled the police; it had sex and money, crime and mystery. And then yesterday we read in the probation officer's report the story of Cecilia Cooney's life. It was not in the least entertaining. For there in the place of the dashing bandit was a pitiable girl; instead of an amusing tale, a dark and mean tragedy; instead of a lovely adventure, a terrible accusation.

In the twenty years she has lived in this city she has come at one time or another within reach of all the agencies of righteousness. Five years before she was born her father was summoned to court for drunkenness and neglect; the Charities Department recommended then that her older brothers and sisters be committed to an institution. That did not prevent her parents bringing, with the full consent of the law, three or four more children into the world. Cecilia herself, the youngest of eight, came at four years of age into the custody of the Children's Society. Six months later, on the recommendation of the Department of Public Charity, she was turned back to her mother, who promptly deserted her.

She was next taken to Brooklyn by her aunt and for ten years or so attended parochial school. At the age of fourteen her mother brought her back to New York, took her to a furnished room, stole her clothes, and deserted her. A year later, aged fifteen, Cecilia became a child laborer in a brush factory in Brooklyn, and was associating at night with sailors picked up on the water front. At sixteen Cecilia was in New York, living with her mother, working as laundress for a few months at a stretch in various hospitals. At twenty she was married, had borne a child, had committed a series of robberies, and is condemned to spend the rest of her youth in prison.

This is what twentieth-century civilization in New York achieved in the case of Cecilia Cooney. Fully warned by the behavior of her parents long before her birth, the law allowed her parents to reproduce their kind. Fully warned when she was still an infant, society allowed her to drift out of its hands into a life of dirt, neglect, dark basements, begging, stealing, ignorance, poor little tawdry excitements, and twisted romance. The courts had their chance and they missed it. Charity had its chance and missed it. Schools had their chance and missed it. The Church had its chance and missed it. The absent-minded routine of all that is well-meaning and respectable did not deflect by an inch her inexorable progress from the basement where she was born to the jail where she will expiate her crimes and ours.

---

[1] From the New York *World*, May 8, 1924.

For her crimes are on our heads too. No record could be clearer or more eloquent. None could leave less room for doubt that Cecilia Cooney is a product of this city, of its neglect and its carelessness, of its indifference and its undercurrents of misery. We recommend her story to the pulpits of New York, to the school men of New York, to the lawmakers of New York, to the social workers of New York, to those who are tempted to boast of its wealth, its magnificence, and its power.

LIII. THE FAMILY

1. THE AMERICAN FAMILY[1]

By Louis I. Dublin
Vice President, Metropolitan Life Insurance Company

The family, that tottering old institution, as some cynics depict it, is still the very foundation of our civilization. It continues to determine our individual as well as our national well-being. The family provides both nature and nurture for the individual; it is the source of continuity and the carrier of tradition for the state. That is why the family has always been zealously protected by organized authority, including church and state. Every tendency toward change in the form of family structure has been fought by them tooth and nail. One would expect, therefore, that both official and private agencies would make the family the unit of observation and note carefully every variety of family organization and would provide a wealth of information on its development.

But, probably because of the highly intangible values involved, the problems of family well-being have resisted stubbornly and effectively the introduction of any attempt at measurement and of appraisal. There are almost no sound facts upon which a constructive social programme may be built. Yet there is already, thanks to the newer ideals of social work, a growing interest in facts underlying family life. It is now realized that if social work is to become truly scientific and to be based upon principles rather than random feelings of generosity and pity, it must be guided by the same methods of accounting and the same criteria of success and failure that are applied to other human activities.

A serious difficulty arises at the very beginning because of the varied conceptions of the family. There is, first, the "natural" family which, in its simplest form, consists of parents and their unmarried children, whether living at home or away. Under this head we must distinguish between complete and incomplete families, and these may be still further divided into broken and unbroken families. As against the natural family, there is the "economic" family, an aggregation of persons living under the same roof and sharing the same table, though not necessarily united by ties of blood or marriage. The state has found it possible to record the facts for the economic family only. As a result, we find in the census returns every variety of family unit represented, though the great majority are true natural families. Despite this drawback, census figures do throw considerable light on the present organization of the family, especially with regard to the trend in family organization, and we have no choice but to use them.

---

[1] Reprinted by permission of the Survey Associates, Inc., and the author from the *Survey Graphic*, December, 1927.

According to the census of 1920, there were 24,351,677 families in the United States, and in 1927 there are probably close to twenty-seven and a half million. Since the total population is now about one hundred and seventeen millions, the average number of persons in the family group is 4.3. The size of the family has decreased slowly and regularly from the beginning of our national history. Families with seven or eight children were the rule in the early period, but by 1850 the average number of persons in the census family was 5.6. The largest families are found in the southern states, the smallest on the Pacific Coast. Other geographical areas show very little variation from the average. There is a widespread tendency throughout the country for the rural family to be larger than the urban family. In 1920 the figures were 4.5 and 4.2 persons respectively. The size of the family varies with the prevailing industries, the housing facilities, the religious affiliations, and even with the racial traditions of groups of people. It would be very interesting to know the size of families in the various sections of the country classified according to color and nativity of the parents, but unfortunately these figures are not available. We do know, however, that immigrant families are larger than those of native stock.

Families are formed through the institution of marriage. In 1925 there occurred in the United States 10.2 marriages per thousand of population; and as each marriage involves two persons, one marriage was recorded that year for every fifty people in the country. Our marriage rates have always been and still are relatively high as compared with other countries. England and Wales in 1924 showed a marriage rate of

7.7 per thousand; Germany in the same year, an even lower figure, 7.1. But both these rates undoubtedly reflect the post-war excess of women of marriageable age. Opportunities for marriage in America are very favorable, because of the age and sex composition of the population and the excellent economic conditions prevailing. Marriage rates reflect quickly the state of well-being of the people and the rise and fall of employment and of wage levels.

The highest marriage rates for the country are in the area which includes Kentucky, Tennessee, Alabama, and Mississippi; the lowest, in the New England states. Considering individual states, Florida shows the highest rate and Delaware the lowest. Although the marriage rate may be expected to vary, it is difficult to reconcile the eighty marriages in Florida for each thousand unmarried people fifteen years of age and over, with the Delaware figure of only eighteen for the same age-group. Rural life influences the marriage rate favorably; city life apparently causes a diminution of about 10 per cent in the marriage rate.

Marriage registration for the country as a whole began in 1887. In that year, the marriage rate was 8.7 per thousand of population. By 1900 it had risen to 9.3, and since 1905 the crude marriage rate has remained above ten per thousand. There can be no doubt that the marriage rate has slowly but consistently increased during the last forty years. In an extremely interesting paper, W. F. Ogburn has recently shown that in 1920 about three-fifths of all persons fifteen years of age and over were married, and of those forty-five years of age and over, 90 per cent either were or had at one time been married. In the early age-groups, there are more married women than men; among older people, the situation is reversed. The steady increase in the marriage rate has been manifest at every age-division of life after the fifteenth year; but accompanying this increase has been a slight increase in the average age at marriage, as the Massachusetts figures show. In 1910, the average age at marriage for males in that state was 29.0 years; in 1926, it was 29.5 years. For females, the average age at marriage in 1910 was 25.7 years; in 1926, 26.1 years.

Another tendency which influences both the marriage rate and the age at marriage is the sex ratio, or the proportion of women to men in a given place. The highest rates of marriage are found in areas with an excess of men; and manufacturing cities especially show a high proportion of marriages because of their large male populations. Where women are found in large numbers, there is not only a low marriage rate but a decided postponement of the age of marriage. Discussing this point, C. T. Brunner shows that the ratio of men to women is determined by the industrial character of a district. Where the main industries call for men's labor, as in mining and shipbuilding, the proportion of males to females is high and the marriage age of the women is low; where the demand for female labor is strong, wages are low, there is a low proportion of men to women, and a high marriage age for women.

Great significance attaches to the age of marriage. The trend towards delayed marriage has caused a wider spread between the biological age for marriage — or the age at which sex impulses become strong and the procreative capacity develops — and the economic age of marriage, or the time when it becomes financially possible for the male to assume family responsibilities. Consequently serious problems have arisen, involving such fundamental questions as the double standard of morality, companionate marriage, the dissemination of contraceptive knowledge, and the like. All these problems of social ethics are quite beyond our province here, and we mention them only in passing to show the deeply significant implications involved in marriage statistics.

If families are formed through the institution of marriage, they are continued through the medium of births. Birth rates are, therefore, a significant factor in determining family stability. At the beginning of the republic, the population increased at a rate of about three and a half per cent a year. This was due largely to the very high birth rate and to the comparatively low death rate. In the earlier years, birth rates of fifty per thousand probably occurred. By 1880, the birth rate was still close to forty per thousand, or nearly twice as high as it is now. Since then, there has been a fairly steady decline in the birth rate, and at the present time it is only about twenty-one per thousand.

Even the present low birth rate would be still lower were we not reaping the benefit of the relatively high birth rates of past decades, which gives us a disproportionate number of persons in early adolescent and middle ages. If we eliminate from our consideration the rural and southern half of the country, we may say that a very large part of our birth rate is the result of recent immigration. Were it not for this factor, our birth rate would unquestionably be the lowest in the world. The tendency of the birth rate is still downward. Just how far the decline will go, it is difficult to say. Contraceptive knowledge is rapidly spreading to all classes of society. This fact, coupled with the declining number of immigrants, who are, for the most part, young people, will undoubtedly slow up the rate of increase, and we may look before very long to a stationary population. It requires close to four children per mother for the population to reproduce itself. If the present policy of restricted immigration and the sentiment favoring small families continue for a few more decades, we shall have arrived at a point of a stationary population. But this whole tendency may shift when the public realizes the direction in which we are going.

As against the formative influence of marriage, there are two disintegrating forces which destroy families, namely, death and divorce or separation. The mortality rate here has always been low as compared with that of other countries. The American people were recruited from hardy stock; and after the country was settled, conditions of life were, on the whole, conducive to longevity. In the earlier years of the republic, the rates were higher in the cities than on the farms and plantations, although in the South malaria could often be counted on to increase the mortality. The general death rate of those years was about twenty per thousand. When, as often happened, epidemics of various diseases, such as smallpox, yellow fever, and cholera, prevailed, it shot up to thirty and even forty per thousand. But note the great improvement which has taken place as shown by the rate of 18.1 per thousand for 1918, the year of the unprecedented influenza epidemic.

The death rate has fallen at least 40 per cent during the last forty or fifty years. In 1900, the first year of official death registration, the rate was 17.6 per thousand. During the following quarter century, it had fallen 33 per cent, a truly remarkable achievement. The early years of life show the most phenomenal saving. Infant mortality is now only half what it was twenty-five years ago, when one out of five babies born died before reaching the first birthday. Now we find fault when one out of every fourteen infants dies in the first year of life. The mortality of preschool children, of children in their teens, of adolescents, and of young adults, has shown large but unequal improvement. Not nearly as many young or even middle-aged people die as the result of tuberculosis as did formerly. Typhoid fever, diphtheria, and scarlet fever are rapidly diminishing and promise to become as rare as yellow fever and cholera. The outlook for the future is promising indeed.

The reduction in mortality has, of course, lengthened the average duration of life, or what is technically called "the expectation of life at birth." In 1840 the average person could count on only forty years; but gradually the expectation has crept up, and it is now about fifty-eight years, making a gain of almost 50 per cent in this comparatively brief period. One point must be made clear, however: The death of numbers of babies and young people before they more than taste life has been prevented to a great degree. Who can estimate the increased wealth and happiness this has brought to the American people?

Death is the great disintegrating force of family life, especially when the father or the mother is taken. It is, therefore, highly encouraging to note a much reduced mortality among young married people as shown by New York State statistics. For married men in the age-group 25 to 34 years, the rate has fallen from 4.9 per thousand in 1909-1911 to about a third of that figure in 1924; in the next age-group, 35 to 44 years, during the same period it fell from 7.4 per thousand to 2.7. Similarly fifteen years ago the death rate for married women was 5.8 between the ages of 25 and 34, and in 1924 had fallen to 1.9; in the 35 to 44 year group, it was reduced from 7.1 to 2.8 per thousand. It is especially the loss of young parents which has the direst consequences upon family well-being, throwing every normal activity of the family out of gear and ushering in a whole series of calamities which taxes every resource of the community. Only a comparatively short time ago, the premature death of parents caused untold numbers of previously self-respecting families to become dependent upon charity. Now the routine of social agencies has been shifted from relief of the aged, the sick, and the down-and-out to more constructive effort, such as health conservation and higher living standards for the great body of wage-earners.

While death has become increasingly less important as a cause of family disintegration, the break-up of families by divorce has become more and more frequent. In 1925, with the highest divorce rate ever recorded in the United States, there were 175,449 divorces, or one divorce for every seven marriages performed in that year. In 1887, when divorce registration was started, there was 0.5 divorce per thousand population. This figure increased to 0.6 in 1897; to 0.9 in 1906; to 1.1 in 1916; and to 1.5 in 1925. There is now one divorce a year to each 135 married couples.

Undoubtedly the presence of children holds the family together. Children are relatively rare in families broken by divorce. There were no children in 57 per cent of the divorced families; 7 per cent made no report; and in the remaining 36 per cent there was an average of 1.8 children. In 19.7 per cent of all these divorced families, there was one child; in 9.4 per cent, two children; in 3.8 per cent, three children; and in only 3.1 per cent of the total divorced cases were there four or more children.

As related to the married population, the divorce rate was highest in Arkansas, Louisiana, Oklahoma, and Texas. In 1925 there were 6.5 divorces per thousand married population in that area. The lowest rate of 1.5 divorces was recorded in the Middle Atlantic States. There is, however, considerable uncertainty as to the value of these figures because of the ease with which individuals can obtain divorces in states and countries other than those of their usual residence. In Nevada it is notoriously easy to obtain a divorce, and therefore the 1925 divorce rate of 34.7 per thousand married population reflected only the laxity of the divorce laws. Among the highest recorded rates for individual states were those of Oklahoma with 7.9 divorces per thousand population, Oregon with 7.6, and Texas with 7.4. In both New York State and the District of Columbia, the rate was less than one per thousand married population — the low point in divorce frequency. There is uniformly more divorce in the cities than in the rural areas.

The increasing frequency of divorce is one of the major problems of modern life. Little attention has as yet been directed by social workers and by students generally to the causes which make for divorce, possibly because this evil is still largely concentrated among the well-to-do. But such tendencies always percolate into other economic classes; what is the fashion in one class is soon copied by all the rest. In any case, substitutes for divorce are already very much in evidence among those who cannot afford the luxury of travel to states with easy divorce laws or to foreign countries. Our courts of domestic relations have an immense calendar of cases of separation and of desertion which are to all intents and purposes the same phenomenon as divorce, because they represent the disintegration of the family, with the consequent hardships and handicaps for minor children. This condition will in all probability continue or get worse unless the community develops a better understanding of the importance of the family in our modern life. Certain tendencies are distinctly adverse to the creation and maintenance of the family, and these for the most part go unchallenged by the socially minded. These include the movement of people from the farms to the cities, the employment of very young persons and their consequent drifting away from their homes, the almost prohibitive cost of domestic service, the increasing popularity of the small apartment, and most important, the approval of childless or, at best, two-child families.

A conference of governors for the adoption of uniform divorce legislation by all the states is obviously needed. But more important still would be the creation and widespread distribution of a constructive and sympathetic view of the significance of the family in the modern state and of the true place of divorce in family life.

This discussion of the facts of the family has been meager and desultory. At every point, we are thwarted by the lack of trustworthy information. It is much to be regretted that the official agencies entrusted with the compilation of facts of our organized community life have missed their opportunity to bring together a continuous series of data which would indicate the trends of the modern family. There must be a very definite shift in the emphasis of our official statistics from the individual to the family as the social unit for purposes of both tabulation and analysis. A primary need is a statement from the results of each of the future decennial censuses of the population of the United States on the number of natural families, supplemented by appropriate classifications according to the nativity, parentage, and color of the head of the family. Following the precedent of other countries, it may be well also to secure for each natural family the year of marriage and the ages of the wife and husband at marriage. And in order to determine the degree to which the natural family achieves its primary aim of maintaining the population of the country, it may be well to secure facts on the number of children ever live-born to the marriage and on the number of such children surviving the census day. If these facts were provided on the enumeration schedules of the next census, and if suitable facilities were established for the tabulation and publication of the results, we should have a statistical foundation for the consideration of family problems in the United States such as England and Scotland possess.

Social agencies which come in contact with families may also perform a distinct service in the collection of family facts. Data on the natural families cared for by them should become available from this source, indicating the relationship of family members to the head of the family, the number of family members by age, the duration of marriage, and the number of children ever live-born and who are now either dead or alive. The committees on statistics of the several state and national organizations of social workers may well take into account these items of family case work and outline a statistical programme which will be in general agreement with a plan developed for official registration. What is needed at the present time is a revival of interest in family statistics and a well-considered plan for their collection and use to make possible an intelligent programme for the well-being of the family, our basic social institution.

2. DECLINE OF THE AMERICAN FAMILY[1]

By William F. Ogburn
Professor of Sociology, University of Chicago

There is no doubt that the family, as a social institution, is declining. This is the conclusion from a series of quantitative studies, the results of some of which are presented in the paragraphs which follow. Many of us do not realize that the family is declining or even changing. For we are accustomed to think of the family as we do of the Rock of Ages, something that in the nature of things must always remain essentially unchanged as the foundation of society, otherwise civilization itself would not exist. And then, when the day-by-day changes are slight, we do not notice them. It is when we return after a long absence that we can see the cumulative changes that have occurred, better than those who have not been away.

---

[1] Reprinted by permission from the *New York Times Magazine*, February 17, 1929.

The perspective of time does show a declining family life. Declining in what respect? Does this mean that the family is decaying, as the heart of a tree will decay and become rotten? Or does it mean that only the externals of the true family are being shed while that which is really significant in the family is not being lost, but, indeed, may be remaining and growing more beautiful?

In order to answer these questions, let us appeal to the fact, a practice, by the way, which more than anything else has led to the breakdown of superstition and prejudice and to that magnificent growth and extension of our knowledge which we call science. But, first, a word of analysis before the facts can be properly assembled.

I have always found it helpful to appraise our social institutions on the basis of what they do. With social institutions it is the function rather than the structure that is important. It is all very well to know that the United States Senate is composed of two representatives from each state elected for a term of six years, but most of us are much more interested in knowing how the Senate behaves — why it yields to this lobby, why it rejects a certain treaty, or how it controls patronage. The family, judged by its past record, has done seven things. These seven functions of the family are the following: (1) affectional, (2) economic, (3) educational, (4) protective, (5) recreational, (6) family status, (7) religious.

It is in these functions, then, that we are to look for evidence of the changes in the family. It is obvious, without the marshaling of data, that some of these functions have declined in scope and significance as activities of the family. But we want to know how much they have declined. Is the process of decline still going on, and at what rate? Will these functions continue to decline in the future?

As to the changes in the economic functions of the family, here is some pertinent evidence. The output of bakeries in the United States increased 60 per cent from 1914 to 1925, while the population increased less than 15 per cent. The bakery is doing some of the work of the family kitchen. We are living also more out of the tin can and the preserving jar. For during this same period the number of persons engaged in canning and preserving fruits and vegetables outside the home, that is, in food factories, increased 100 per cent, as compared with about a 15 per cent increase in the number of families.

That the husband is less dependent on the wife for food — a statement of significance, perhaps, in explaining the large number of widowers — is shown by the fact that the number of waiters has increased four times as fast as the population since 1900 (and up to 1920). The restaurant keepers have increased during this time 158 per cent, while the general population increased only 39 per cent and the urban population increased 46 per cent. Another piece of evidence that helps to explain why city life discourages marriage by about 10 per cent (as it does), is the fact that the number of delicatessen dealers in the United States increased in number from 1910 to 1920, 43 per cent, or three times as fast as the population. There are, of course, no delicatessen dealers around the corner from the farmhouse.

The foregoing statistics show that now the family is doing less and less in the preparation of food for its members. This function is shifting to outside agencies. But other economic functions are being shifted to other outside agencies as well. The number of launderers and laundresses not working in laundries decreased by one-quarter, while the amount of work done in laundries increased from 1914 to 1925 by 57 per cent. So also it would seem that there is less sewing done in the home. At least the value of the sewing machines sold to both factory and home in 1925 has made no significant change since 1919, which probably means that the sales for home use have declined. The number of factories, the number of wage-earners, and the amount of horse power making sewing machines have all declined markedly since 1919.

While all these losses in family activity have been occurring, there has been an actual decline in the number of domestic servants, despite the great increase in wealth and income of the well-to-do classes, which is probably greater than the increase in wages. From 1900 to 1920 the number of domestic servants decreased 15 per cent, while the number of families were increasing about 30 per cent. This great decrease in the number of domestic servants relative to the population does not, however, seem to have kept women more at home, despite the sanction of authority which says that "woman's place is the home," for one out of every eleven married women throughout the United States worked for pay outside the home in 1920, while thirty years previous there was only one out of twenty-two. Furthermore, one out of every four women at work outside the home is married. Probably few readers realize how rapid is this movement for women to work outside the home or the extent to which it has grown, as shown by the foregoing figures.

Perhaps some readers will be little impressed by these great economic losses of the home, claiming that whether the family washing is done inside the home or out is not of any consequence. The real value of the home lies in such things as the training of the young and the inculcation in them of high standards of moral conduct and character. Very probably. But it is worth while to note that there are a great many homes that never have any children to bring up in the good way. As far back as a generation ago, in a sample of two thousand families of native stock studied by Professors Ross and Baber, one in six of these completed families never had any children born. In Rochester, New York, in 1920, of all the families in the city, three out of every ten had no children living with them. At the present time, if conditions continue as they are, ten women will bear only fourteen girl babies, that is, approximately twenty-eight children.

Even when there are children, the homes are developing substitute parents for part of the functions of training, for school-teachers may be viewed as part-time parents. Since 1870 the real parents have tripled in numbers, but these substitute parents, i.e., these teachers, have increased sixfold. Teachers are taking the children away from their parents for longer periods of time, 78 days in the year in 1870, but 136 days in 1926; and they are taking them away from their parents at tenderer ages, for one in six of the children between five and six years is in school now. This loss of function is not necessarily an index of decadence, for it may be that school-teachers are better than parents for this job. And no doubt there is time left at home sufficient for some moral training. Of course, these remarks apply only to part of the homes, namely, those that have children.

One of the very attractive aspects of family life has been not only the training of the young but also the care and protection which the family provided for its members, particularly by husband and father and by the adults for the young. Love and protection are an appealing combination; but the rise of modern police and the growth of social legislation have changed somewhat the situation from early times. In 1920 there was one policeman (constable, sheriff, or detective) to every 220 families in the United States as compared to one to 240 ten years earlier.

The growth of the machinery of the law, the courts, the protection of the highways, the abolition of dueling, and the prohibition of the carrying of firearms have shifted to the state in large part this protective function, which formerly was little developed by the state except in international matters or their equivalent. The total number of such police, marshals, detectives, constables, guards, soldiers, marines, firemen, officials, and inspectors increased 70 per cent from 1910 to 1920.

While the state's function as a protector is growing, that of the family is declining. Such is the meaning of the juvenile court, compulsory education laws, and child-labor legislation. In one large city in the United States 4.86 per cent of the children ten to seventeen years old in 1926 were investigated for reported offenses by the police. Does not this indicate a failure of either the parents or the family as an institution to provide protection? The parents nowadays have, however, a very good excuse, for the modern urban environment is a very difficult one in which to bring up children; often the homes are broken and the mother works. Does this mean that society has to protect itself against the family situation? It would seem that in certain cases the state has, indeed, had to protect the younger members of the family against the family as such, for forty-eight states have been compelled to develop compulsory education laws and enactments against child labor.

Not only is the state developing these protective functions, but so also is private industry. Witness, for instance, the growth of insurance, which has been enormous. In 1926 the amount of insurance of all kinds was thirty times as great as it was in 1870. Formerly grown-up children and adult relatives were a sort of insurance for the old people and also, indeed, for the bereaved widow with children. But now there are few children, and with our amazing development of transportation the children scatter to the lumber camps of the Pacific Northwest, the steel mills of Pittsburgh, or some go as far perhaps as the Argentine. An individual becomes separated from his relatives. City homes and life do not afford readily the type of protection that the farm did for old people and dependent relatives. The state has entered the field of insurance, with its workingmen's compensation, its widows' pensions, its health insurance, as well as its supervision of private insurance.

This scattering of the members of families and relatives, done so effectively by modern industry and particularly by the vast network of our rapid transportation, is making a man less a member of a family and more an individual. No one knows who the family of the individual was or is. The family is no longer responsible for this detached individual, a thousand miles away from the nearest member of his family. The contracting of marriage in not so much a matter of family concern now. It becomes more a matter of love, since with this loss of functions a housekeeper or a provider is not so essential. And so the great significance of family status has shrunken to smaller proportions.

In olden times recreation was provided by the family in the family habitation, in which the various members of the family participated. But now increasingly more recreation is found outside the homes, except perhaps for cards and the radio. A very good example is the moving picture, for which there are more than twenty thousand theaters in the United States. An average attendance a week of five thousand means a weekly attendance of a hundred million, almost the total population of the United States; while a quarter of a century ago none went to the motion picture and few to the theater. Twelve million go to see the big league ball games alone, while twenty-five million see football games; a million play tennis and four million play golf. Where formerly there were individual yards to each home, now there are public yards. The parks and playgrounds in 127 cities in the United States have been increased eight times from 1880 to 1926.

The changes in the type of our dwellings are perhaps indicative as a sort of total or summary of what is happening to our family life. For we are living more and more in apartments. For instance, in 1928, from the records of building permits issued in the United States, we learn that two-thirds of the families who will occupy these new homes will be living in apartments or flats, while only one-third will be in the single family house. These apartments or flats in multi-family dwellings are small, with small rooms and diminutive kitchens, with communal heating and lighting, and without yards or outdoor play space. In a certain sense, then, these modern city apartments may be considered, in the opinion of the writer, as a symbol of what the modern family is and is becoming, as seen in terms of the functions it performs; while it would also seem fair to consider as representative of the high state of the family in time gone by, that is, in the agricultural era, the farm with its expansive acres and large yard, the house with its porches and kitchen, and with its frame woodsheds, smokehouses, stables and other outhouses. It is in this sense, then, that the family, symbolized by the city apartment in the multi-family dwelling and the farm homestead, has declined.

Is this decline decadence? I hardly think so, if you mean a disintegration of organized structure, as the term is used in the realm of plant life; nor indeed if you mean decadence, as it is used by moralists. For it is not so much a decadence of organic structure as a shrinkage in size and a loss of some of its parts. The family has declined, become smaller, and plays generally a less significant rôle in society now than it formerly did. But it may be just as vigorous, just as sound in its reduced size and in the more limited spheres in which it now functions.

Studies of social change abound in illustrations of the persistence of cultural forms through the loss of functions and the addition of new ones. It would perhaps be less a distortion to think of the family as a survival rather than as decaying. But we usually mean by survival a cultural form that has almost ceased to function, which, of course, is not true of the family. So it could not be called a survival. It has simply lost a large number of functions formerly possessed by it, functions that were developed enormously by the patriarchal family of historical times, but perhaps not so highly developed in the family of primitive culture before the rise of agriculture and the domestication of cattle.

Is it a sign of moral decay? I hardly think so. That depends upon the effect of these changes upon the individual. For the family exists for the individual rather than the individual for the family. This issue of the relation of the individual and the state was fought out many years ago by the great thinkers of the nineteenth century, and it seemed that the victory went to those who held that society existed for the individual. But there are today those who think otherwise, notably the present ruling group in Italy. And certainly some individuals love so keenly the family that they seem to think the individual exists for the family.

The family has declined, but is the individual (not the family) worse off because of it? Each reader is capable of judging this question for himself. But it is permissible to note here that the individual may be better although the family may be worse. It has been recorded in the previous paragraphs that the family has lost many functions. This is true. But it is not to be implied that these functions have disappeared. They are still performed by agencies other than the family, notably by the state and by industry. So far as the individual is concerned, it may be that these functions are performed better for him by agencies other than the family. The kindergarten teacher may render the function better than the parent, the state may protect better than the father, and canned soup may even be better than homemade soup, and, certainly, manufactured cloth is better than homespun.

But no doubt the reader may feel, in this modern age when everything must be objective to get even a hearing before science, that the author has been too much affected by this environment and is side-stepping the question of the soul or spirit of the family. It may be so; since the spirit is always elusive. Values are difficult to measure. Has there been a weakening in this spirit of family life? This true family spirit, beyond which everything else is mere externality, is very probably born of affection, sublimated into moral feelings. The approach is, therefore, through study of the affectional function. But this is another story and takes a longer time to tell than does the decline of the economic functions, and hence cannot be undertaken within the limits of this article.

The handwriting seems to be fairly clear, however, on one point. The loss of these various functions appears to be due to mechanical invention, particularly power-driven machinery. These inventions have made cities and robbed the family. Since these inventions still exist and are in use, the family is not likely to return to its former state — unless in the distant future new inventions take place which will restore these functions to the family. This we cannot predict. The fact is that there is no slowing up yet in the rate of loss of these family functions.

Mechanical invention appears not to have had so much effect on the affectional function as on the economic and correlated functions. It is true, feminism and divorce are in large part produced by steam and mechanical invention. But divorce, though apparently an index of a weakening of the spirit that ought to pervade the family, may not really indicate this. There may have been just as much unhappiness in early times which was borne in quietness, while today the weakening of other family ties and of religious sanctions allows this unhappiness to break forth in the divorce court. Also, this may not be the case. But the point is that with the more or less inevocable nature of the changes occurring in the family, the future of the family, and the future of that spirit of family life with its moral connotations and social values, rest pretty much upon this affectional function. The evidence so far presented in this article throws little light on whether this function has declined or not or what its future will be.

3. THE NEW NEIGHBORS[1]

By Frederick M. Eliot

There isn't the slightest doubt that neighborhoods are not what they used to be. There are, first of all, the physical changes, such as the invasion of apartment houses and the corresponding relative decrease of single dwellings. We are reminded by the campaign of advertising in the street cars, with their horrible disregard of the amenities of spelling, that the "Naborhood Store" is suffering because of the rapid growth of chain stores and mail-order houses. New methods of cheap transportation, supplemented by prosperity that can ignore the matter of cost, have largely done away with the necessity of locating one's home within walking distance of one's work or of seeking one's amusements in the immediate vicinity of one's dwelling place. Geographically considered, the neighborhood is rapidly ceasing to be anything other than a more or less accidental grouping of sleeping quarters.

How far-reaching this change actually is, was brought sharply to my attention a year or so ago when I walked out of my front door one morning and saw an undertaker's car in front of a house almost directly across the street. I suddenly realized that I didn't even know the name of the family who lived in that house, and that now it was too late to inquire. Neighborliness — the natural human impulse to be kind to one's neighbor in his time of trouble — had ceased to bear any direct relation to the fact of physical nearness. That could not have happened to my father or mother. It could not have happened fifty years ago.

---

[1] Reprinted by permission from *Family life today*, edited by Margaret E. Rich, Houghton Mifflin Company, 1927.

Psychologically, the changes are even greater. In his *Confessions of a reformer*, Frederic C. Howe describes the way in which family life was affected by its neighborhood in Meadville, Pennsylvania, just about fifty years ago. He tells us that "what the neighbors might think, seriously conditioned our lives. Watchful eyes observed us in all we did. There was a sense of being clamped down stiff, in a mold made for one. My mother was a neighborly person, ministering to the needs of everyone on our street; but she was sensitive to their opinions and prejudices, deeply unwilling to have them flouted." The moral standards of the neighborhood constituted a rigid fence about the lives of every individual and every family, shutting down relentlessly whenever anyone wanted to break loose. Even his father, who had more of the adventurous spirit, was careful to indulge his love for freedom in such a way as to escape if possible the prying eyes of the neighbors. A few "purple spots of freedom" there were; but life in general was strictly governed by the neighborhood standards, which are inspired largely by the evangelical religion which Mr. Howe calls the "most characteristic influence of my generation" — an influence from which he frankly admits that his mind was never emancipated.

Whether, on the whole, such influence upon an individual or a family was a good or bad thing is not easy to say. The repressive character of strict neighborhood standards must be offset by the reinforcement which they afford to weak and wavering souls. If some families were held down by the opinion of such a neighborhood, other families were assuredly held up. If a few gifted individuals were smothered, undoubtedly a much greater number of less fortunately endowed were sheltered and saved. The balance is an impossible one to draw with any confidence; but the important fact is that the influence was there, in very definite and tangible form, for better or worse.

If the family life was in many respects conditioned by the neighborhood, it was also true that the family had an important part in creating and changing the neighborhood. Mr. Howe mentions almost casually the fact that his mother ministered to the needs of "everyone on our street," but that fact deserves more than a casual reference. To be a "good neighbor" was no slight matter, and a family might become a very great factor in setting the tone of a neighborhood. The sense of responsibility which came with the consciousness of belonging to a neighborhood gave meaning and value to the family life; it built up the family self-respect; it nourished the roots of the family tree. The old farmer in Robert Frost's well-known poem is a fair example: "Good fences make good neighbors." Yes, and that kind of responsibility made good families. To the extent that the neighborhood afforded a field for the expression of family life in terms of civic responsibility and human friendliness, it was of vital importance to the family as a social entity.

Perhaps the best way to picture the contrast today would be to call in the services of a humorist, for it sometimes happens that the humorists, like the poets, see things on the whole more clearly and set them forth with greater skill than the most erudite sociologists. In a recent number of *Harper's Magazine*, Stephen Leacock calls attention to the fact that many of the poems on which the older generations were brought up are no longer intelligible to "the wiser youngsters of today," and he suggests that these poems should be rewritten so as to make them usable in modern nurseries. With characteristic modesty, he merely offers a few samples of how it might be done, and these samples are extraordinarily suggestive as well as amusing; they reveal the learned professor of political science underneath the humorist.

For instance, Thomas Hood's familiar poem which begins,

I remember, I remember
The house where I was born,

would be changed so as to commence with these lines:

I wish I could remember
The house where I was born,

which suggests subtly but unmistakably the vagrant and nomadic character of much of our modern family life. The changes within the family, especially in the attitude of children toward their parents, are beautifully summed up in his proposed version of the touching old verse:

Father, dear father, come home with me now,
The clock in the steeple strikes one:
You promised, dear father, that you would come home
As soon as your day's work was done.

Under Mr. Leacock's magic touch, this is transformed to read:

> Oh, father, dear father, why won't you go out?
> Why sit here and spoil all the fun?
> We took it for granted you'd beat it down town
> As soon as your dinner was done.

But it is the third of his suggestions, in which Mr. Leacock offers a revised version of "The Village Blacksmith," that is most closely related to our present subject:

> On the corner of the main street stands the principal garage.
> The garage man is a man of singular muscular development.
> Children coming home from school like to watch him punch the gasoline.
> On Sunday he goes to the church whenever any of the cars of the congregation break down.
> In this way he not only earns a night's repose but even now and then he can take a trip to New York and go without repose for a whole night.

In those five lines, I submit that Mr. Leacock has given a remarkably vivid picture of the modern neighborhood, and one that is startlingly different from Mr. Howe's picture of Meadville a half century ago. A few things, of course, are still the same. Children apparently still go to school; they still like to loiter on the way home from school to watch a man at work, though punching gasoline is a distinctly less poetical occupation than hammering out a horseshoe. Apparently, also, there are still churches, and some of the owners of motor cars still go to church on Sundays. Nothing is said about the garage man's daughter, or the village choir, but perhaps we may assume that both are in existence. It would, however, scarcely be safe to assume that the garage man, like the blacksmith, has paid all his bills, especially in view of that line about an occasional trip to New York. No; in spite of a certain number of similarities, the total effect is that of complete transformation. Gone is the spreading chestnut tree; gone, too, the lilting rhymes and rhythms of the old New England poet; and the good old neighborhood has gone with them.

The church will serve as an illustration of the change that is going on in a great many other directions, at least in the larger towns and cities. The neighborhood church used to be one of the most effective instrumentalities for building up the kind of neighborhood sentiment that in turn built up family life. Present-day churchgoing is largely unrelated to neighborhood or even family considerations. I know families in which the father goes to one church, the mother to another, while the children are enrolled in the Sunday school of a third. Perhaps each member is better served than if all went to the same church, but the situation is very different from what it used to be when the blacksmith sat in the same pew with his boys while his daughter sang in the choir.

The development of specialized schools is another tendency that works against the neighborhood. We now have separate high schools of various kinds, frequently located in various parts of the city. There are too a variety of special schools for children with handicaps of different sorts, including the handicap of being unduly intelligent. In a family with four or five children it might easily be possible that each child should go to a different school — John to the regular high school, Mary to the so-called mechanic arts high school where she can get special work in domestic science, Henry to a junior high school, Nellie to the school where special attention is given to speech defects, and Tom to the alpha class in still another school. Mind you, I don't suggest that there is anything wrong about all this; but the neighborhood school is disappearing somewhere along the line and carrying with it a part of the neighborhood itself.

That this disintegration of the neighborhood is going on, and that it must have serious consequences for family life, seem to me obvious facts which no amount of regret or complaint can mitigate. Nor is there the slightest chance in the world of restoring the conditions which have gone. But if the neighborhood as it used to be is no longer possible, there are forces at work in our day which can be utilized to create a new kind of neighborhood that may prove to be more effective than the old in its constructive influence upon the family.

You will remember the cynical and hackneyed saying: "God gives us our relatives, but thank God we can choose our friends." Well, the most important thing about the new kind of neighborhood is that to an increasing extent we can, and do, choose our own neighbors; and that, too, seems to me something for which we may well be grateful. For the opportunity to choose our neighbors opens the possibility of choosing them intelligently; and even if at present we fail to use very much intelligence, there is room for hope that with practice we may improve. For those who are concerned with the future of the family, as an essential institution in human society, I cannot imagine a more significant or hopeful change.

The new neighborhood will be far less dependent than the old upon the accidents of geographical location, but it will inevitably have its geographical aspect. Even here, however, the element of choice is becoming very much larger, and this is the hopeful side of the phenomenon which we often deplore because it leads to so much nervous and senseless moving about. Freedom to move one's home, easily and quickly, for a good reason or for no reason at all except the whim of a restless spirit, is indeed inimical to that stability and fixedness of location upon which the old neighborhood was largely founded. But, on the other hand, this same freedom of movement makes it possible for a family to choose the location of its dwelling place in accordance with the special needs which, from time to time, develop within it. Supposing the changes of location to be made with some real measure of common sense behind them, is it not true that the mobility of the modern home might easily become a factor of considerable value in promoting the best interests of the family? Even from the merely geographical point of view, a neighborhood which has been deliberately selected is far more likely to become a real factor in the life of a family than one in which it is compelled to live. A little careful observation of the family life among our negro fellow citizens, who are for the most part denied the freedom of movement which is becoming so nearly universal otherwise, will, I think, bear out the truth of my contention.

Instead of starting with a group of people who happen to live near each other, and building up a set of common interests on that basis, the new neighborhood will begin with the common interests and let the matter of living near one another follow along behind.

Not far from my own house there is a little church which has interested me for a good many years. The doctrine which it teaches might seem to some people fantastic and utterly incredible, but those who accept it are willing to make great sacrifices to maintain a place where it may be set forth. The little company of worshipers come from every section of a city that extends over fifty square miles of territory. I cannot think of any church which is less of a neighborhood institution, in the old sense of the word; yet I have discovered that the neighborly spirit among those people has completely transcended the mere matter of geographical diffusion. They are not neighbors who go to the same church, but ardent churchgoers who have become neighbors. And I believe the change has made the neighborhood a more real and vital factor in their individual and family lives.

Gradually there is coming about a rearrangement of social forces, with new starting points and new directions; but the functions of the old forces are not lost. They are being assumed, with greater promise of effectiveness, by the new forces. Everything which the old neighborhood did for the family can be done by the new neighborhood; and because the new neighborhood is primarily functional rather than geographical, because it may be directed by intelligence rather than accident, there is reason to expect that the family will be served in a more real and vital way.

Such a result depends, of course, upon the amount of intelligence which is actually brought into play in the creation and development of the new kind of neighborhood. What exists at the present moment is a potential rather than an actually operative "new neighborhood," and I want to point out some of the ways in which these new influences might be more intelligently directed, and to make a plea for the sort of leadership which will make that result more probable.

Let me begin with one of the most recent and one of the most roundly abused of American institutions — the luncheon club. H. L. Mencken has tried his best to make it impossible for anyone to take these clubs seriously, but the significant fact is that tens of thousands of American men — and still more recently a considerable number of American women — insist upon taking them with the utmost seriousness. Those of us who belong to such clubs have no sense of shame in confessing that we take our membership as seriously as Mr. George F. Babbitt would take it if he were eligible to election to our particular club. Nor do we consider that we thereby forfeit our claim to a modest amount of humor in our make-up. We take our luncheon clubs seriously because we enjoy them and because we believe in their principles, and I have a distinct feeling that our fellow members are more truly our neighbors than the people who merely happen to live in the same block.

When you see three or four hundred men, ordinarily self-conscious and conventional as perhaps only American men can be, forgetting their dignity and even their desire to maintain the outward appearance of dignity, you may be sure that they are under the domination of some force which no student of contemporary society can afford to ignore. The fashion in which we utilize the power represented by the vast network of these organizations must make a considerable difference in the whole fabric of our social life. Many an American city has begun to discover that when this force is directed into the channel of philanthropy it can, if wisely controlled, be of tremendous service. Too often, of course, it is sentimental rather than intelligent, but one of the most interesting things about it is the willingness with which it accepts intelligent leadership, provided that leadership is sufficiently intelligent to be sympathetic.

If fifty years ago family life was in considerable degree controlled by "what the neighbors might think," there is no reason to suppose that a similar control over family life might not be exercised by the opinions and judgments of the members of the newer kind of organization. How far such a control has already begun, I have no adequate evidence to say, but I have just enough knowledge of specific instances to lead me to guess that it has already become a factor in the lives of many families. Great potentialities lie ahead in this field. Just suppose, for instance, that by a careful and systematic campaign of education we could win the understanding support of the members of the luncheon club for the idea of the child-guidance clinics — not their financial support, but their moral support. It doesn't require much imagination to see what an enormous effect upon American family life would be the result. . . .

4. FAMILY DISRUPTION AND DIVORCE[1]

By Mary Edna McChristie

Divorce, defying the analyses of experts, is the crystallization of as many causes of discord as there are stars in the heavens, and many of them just as hazy and far-distant as the Pleiades. A divorce petition is an uninteresting looking document, a bit of black and white, yet it is a subtle challenge to society, bearing on its face distressing truths or distorted lies.

---

[1] Reprinted by permission of the Survey Associates, Inc., and the author from the *Survey Graphic*, December, 1927.

A divorce decree, formally worded, legally signed and entered, is a dynamic thing with the finality of a death warrant.

And the hearing room of the family court! Its doors swing eternally to admit the disillusioned young, the restless middle-aged; the uncongenial, mental strangers to each other; the unsportsmanlike, the selfish, the amorous, the unfaithful — all chafing, secretly hating each other, and desperately determined to escape these intolerable conditions. The walls of this hearing room could be papered, inches thick, with the typed lies of attorneys, plaintiffs, defendants. Lies of collusion, white lies, black lies, well-intentioned lies, mean lies! The floor resounds to the feet of ambitious attorneys, harassed witnesses, alert newspaper men — the feet of the young, hungry for a new love experience — the deliberate approach of the middle-aged, apologetic but determined — the occasional lagging steps of the old, anticipating by only a few years a separation that so naturally would be theirs. And through and through this atmosphere is shot the poison of hatred, anger, petty jealousies, calamitous misunderstandings. In this poisoned air old loves wither and die, fresh relationships evolve, and children are forced into new and often deathly ways of life.

Some reasons that these divorce petitioners offer seem woefully trivial, but the causes beneath the surface are fundamentally important.

A would-be plaintiff rushed into my hearing room, with her child in her arms, and began breathlessly:

> If you lived as I do in two rooms — if every time you turned around you saw your man, either shaving or dressing, or chewing tobacco, finally something would spin around in your head and crack, and you'd find yourself screaming out. I know, because I did it. I could have loved my husband in a house where we didn't see each other all the time, but as it was, I got to hating him. I used to wish his Adam's apple would choke him. I used to long to bump his head against the sink when he spattered the water over everything. I got so I couldn't look at him. He is a good man, too — his only vice is chewing tobacco.

A temporary separation, larger quarters, a discarded cuspidor, surreptitious chewing of tobacco while at work, an obvious attachment for Wrigley's while at home, and everything has been harmonious for three years. Most of our applicants live in crowded rooms; they are so pressed financially that amusement is out of the question; it is not surprising that habits and mannerisms overshadow very lovable qualities.

There was another woman, the mother of three, who so naïvely said, "The only time my husband looks good to me is when I get on a train to leave him" — a talking exponent of the theory that all married couples should have occasional vacations apart from each other. Distance, the stimulation a man derives from a mild flirtation, the excitement a woman experiences over a new wardrobe, the fact that Dad can tell his old jokes without having his style cramped by Mother, and that she can brag a little about him without embarrassment — all the possibilities of a temporary single blessedness as a curative force — are utilized in many cases appearing at court for possible reconciliations. Yet there still live women who say, so self-righteously, "I have never left John for a single night." Poor John!

Beneath many petty jealousies and childish complaints lies a fundamental truth — mother love gone wrong many years before. And into divorce-court rooms, everywhere, march a ghostly array of mother spirits, never relinquishing, jealous, critical, egocentric. Their attacks are often so effective that many a bride could have saved herself agonizing hours had she walked straight from the magistrate to the divorce court. As one male victim of an overly zealous mother said, after the decree was granted, "Now what am I to do? I'm single — I'm unhappy — I'm unanchored — what next?"

Close living quarters, poverty, a big gap in ages; one parent a home-lover, the other a fox-trotter; the interference of overly interested relations; jealousies; too frequent childbearing; lack of wholesome sex education of both men and women; conflicting personalities (and no situation is more productive of active conflict than this); the hate which comes from trivial mannerisms that goad to fury; intimate desecrations that affect the soul: all these and many more serve as the motivating underlying causes, no matter what incidental reasons are given.

The showing of a necessarily superficial survey of six hundred cases in which I talked privately with as many divorce plaintiffs was astonishing. In these six hundred cases of alleged gross neglect or cruelty, five hundred and eighty, or 97 per cent, confided stories which indicated sex antagonism or sex maladjustment — a startling deduction and an eloquent cry for sane, wholesome sex education before marriage.

The varied and contradictory opinions about divorce — legalistic, socialistic, and all the rest — fail to take into account this one absorbing fact, that divorce between two hating adults, a childless couple, may be distressing and disillusioning, but it is unimportant. In their feverish search for personal happiness they are quite incidental to the scheme of life, and as contributors to posterity their names are not listed. Why does this dreary, unhappy procession of divorce plaintiffs and defendants with no children and no responsibilities have to pass in review before a curious public? Why is it necessary to file incriminating petitions, derogatory charges, to appear in open court, feed the scandal-lovers, and furnish the newspapers with intriguing headlines?

Two business partners with no responsibilities, who meet their mutual obligations, often dissolve partnership painlessly and without bitterness. The methods of dissolving partnership with or without obligation may be identical, but in cases where there remain common debts to be met, the dissolution is much more serious. Among these latter, each party is held responsible afterward, not for half the obligations incurred during the original partnership, but for all. So divorce between a warring, unsympathetic father and mother is of tragic import, and until some scientist evolves a substitution for father and mother love (centuries old and still a mystery), divorce will continue to be a hazardous proceeding, dangerously disastrous to the children involved.

After listening in on thousands of divorce hearings, which are necessarily hurried, superficial, and often destructive, I have evolved one conviction — the need to divide divorce petitioners automatically into two groups, which are widely divergent in their effect upon society: those *with* and those *without* children. By making such a division we could submit the cases of childless couples (about 50 per cent in our court) to a jurist, a man of fairness, equipped with a knowledge of the divorce statutes and property rights; and to the socialized judge with vision, essentially a scientist, incidentally a legalist, we could apportion all cases involving the future of the helpless parties to the action — the children.

The hidden forces of divorce, its repressions, its underground workings, demand the highest intuitive powers and the keenest intelligence. The family courts are not functioning either intensively or effectively unless they contribute to the scientific consideration of family life and its essence — the children. Handicapped by a constantly filling docket, countless interruptions, and routine work, divorce hearings, as they are constituted at present, can only skim the surface. Case after case cries out for the clear insight and tactful handling of an expert able to judge, so far as is possible, the psychological moment for the rehabilitation or the disruption of a family.

I recall one cultured couple, both college graduates, whose two adorable children were threatened with a tragic "receivership." The wife was intelligent but so virginal that she regarded the kissing of her husband as a kind of ceremonial. He was magnetic, affectionate, pleasing to women, the kind of man single women adore. His surreptitious interest in passing adolescents showed that he was not yet out of the prowling stage. He was tender to his children, who worshiped him.

We argued for another try at married life. He pleaded and made many promises. She looked him over impersonally and finally consented "for the children's sake." She wasn't using the old circus excuse either; she was sincere.

I talked with him alone. He confessed his interest in many women but protested that he loved only one — his wife. He complained that she had not kissed him voluntarily for months. It was at these times that he looked "the others" over. He acknowledged that he always felt ashamed afterward, and this knowledge made him self-conscious and irritable.

We talked. We begged. Finally they decided to try it again. The children grabbed him excitedly and they all went home together. At that rather impressive moment he turned his head to see if my adolescent ward was watching him.

All these developments preceded one particular Monday when they again appeared, the wife complaining that he was beginning to come home late, smelling of cheap perfume, a faithful barometer of a man's evening amusement. She refused to go on, but cried at the thought of what separation would mean to the children, for they adored him. The little four-year-old son had never recovered from the horror of his first parting from his father and would often awaken from a sound sleep crying out, "Daddy, Daddy, don't run away — can't 'tand it! Can't 'tand it!"

Something radical had to be done to bring him back, but what? Watching her husband's expression as she talked to her handsome attorney (occasionally they are all of that) gave me the idea — evidently the husband was intensely jealous. He hadn't succeeded in awakening her love and he was determined no other man should. I dismissed him and told her of my plan.

We arranged to have a woman friend take a room at their apartment with the understanding that she would remain home several nights a week with the children. We planned for the wife's first party (her husband gave her none), with all the excitement of a debutante over her first tea. She was to go on a perfectly exciting spree — a picture show, a dangerous ice-cream soda, and a late return home — this after her dear wanderer had come back from somewhere.

We awaited results with as much feverishness as a dramatist on his first night. Will it take — will it fail? But oh, how it took! He arrived home at eleven, never dreaming that she could be out of place. The piano and the buffet always occupied the same position, and she had become as static as a piece of furniture. He tore from the house, walked up and down the street, around the block, while she watched his antics from a near-by hedge. She slipped in and was undressing when he arrived, breathless from running.

Such excitement! She, the mother of his children, out until eleven-thirty! He, the father of his children, suddenly revering the state of motherhood! His inconsistency was delicious. A real scene followed. He cut up as we would expect a man to do who monopolized all the love experience. She smiled mysteriously, and refused to tell where she had been. He never told *her*, so he dared not insist.

The next night he was home early and nearly electrified the children by announcing that he would play games all evening. She, following directions, appeared pleasant, but somewhat detached — another attitude that maddens the egotistical male. She looked up time after time to find him glaring at her with an intensity that gave her great joy. Motherhood, the sacrifice of her life for her children, giving no thought to other men, all these things meant nothing — but the suspicion that she might be desired, intrigued, stimulated him. Two nights later he took her to a show, the first time in three years. Her joy was pathetic. She was starved for the attention most women take for granted.

After a week of staying at home, he began to show signs of restlessness. We expected that, too. She telephoned me, and a few evenings later I called her, and by prearrangement she answered evasively. He had intended to go out but canceled the engagement, to stay home to watch her. The kick of his affairs had departed. He wasn't able to concentrate on them while he was continually wondering where his wife was spending her evenings.

We sat on the side lines, watching, feeling the pulse, making suggestions, noting the effect, and praying that home might become a habit. He had already shown his wife courtesies that had been forgotten with the end of the honeymoon.

One day a year later he came into court looking actually crestfallen, to ask if I knew how he could regain his wife's love. He was afraid she was interested in someone else, and he wanted her. He loved her. He told me of my own mysterious telephone calls, the unexplained evenings, his wife's detached manner, and particularly stressed her few unsolicited caresses — the attempt of the poor frigid wife to be affectionate, only to be misunderstood. He was loyal, and decidedly worried. I suggested a concentrated love campaign with close application to his subject, and the case went on. Thus for two years we have kept the family together, and during his hectic process Daddy again has fallen in love with Mother; friends are calling; there are parties; and the children are developing beautifully.

Situations like this point clearly to the need of a reconciliation department. Just one small and necessarily superficial survey in the Cincinnati court gave us this astonishing finding: that out of four hundred complaints involving domestic trouble, only thirty-two petitions for divorce were ever filed. We have no means of ascertaining whether the other three hundred and sixty-eight disgruntled couples would have appeared in court eventually even had they never applied to the adjusting department for assistance, but the outstanding fact remains, that they did not apply for divorce after they had threatened to do so. On this we base our assumption that the court was reasonably successful in its attempt at reconciliation and adjustment, though we were unable to ascertain definitely by follow-up why these couples never returned. Divorces granted in these three hundred and sixty-eight cases would have affected some two hundred and ninety-six children, as our general statistics show that there are about four children in every five cases. Considering that some three hundred children have been kept from meeting the hazards of a broken home, we begin to comprehend the potentialities of a reconciliation department. Every socialized court which uses methods such as these can report similar results. They could be duplicated hundreds of times in the reconciliation departments of family courts over the country — Detroit, Buffalo, New York, Cleveland, Chicago, Minneapolis, and so on, which are employing experts in human relationships to cheat grasping lawyers, interested neighbors, prejudiced relatives, the court itself, of the sorry end results of families gone wrong.

I.A Surely in some cases the constant quarreling and destructive morale of a home are far more demoralizing to a child than a separation and subsequent placement. But whether it be a case involving the disruption of a family, or the custody of a child, the presiding judge should not pass upon the future of a child until he is familiar with the facts of the family's life and potentialities. He should know, beyond a reasonable doubt, where these children have the best chance, where the influences would be the most wholesome and educational. He must view with shame the old method of asking a boy or girl that tragic question: "Do you want to live with your mother or your father?" And he should never have to rely on the distressed face of a child searching his heart for the answer.

Day after day we deal with the human mistakes that are due to some judge's faulty, hasty decision regarding the custody of a child.

I recall Mary Jane, a lovely girl of fourteen, as she sat in my court room while the divorce case of her mother and father was being heard and her custody decided. A substitute judge occupied the bench, and I can still see the desperate look on Mary Jane's face when he told her that she must live with her mother.

The attorney who represented the mother was a fee-chaser, not a father; the witnesses were perjured, well paid for their day's services; the case was decided without any investigation as to the merits of either parent, as are thousands everywhere. The father pleaded, but the usual appeal for mother love was feelingly presented by the attorney, and the decision remained unchanged. The father, tears streaming, stepped down to take Mary Jane into his arms to say good-bye.

This little girl came into court loving life, but something died within her that day. A year later she ran away because she hated her mother and was desperately homesick for her father. She appeared before me as a sex delinquent. Something called to me from the past. The eyes, now sophisticated, looked sullenly into mine. I avoided looking at her, for I remembered the day the beautiful possibilities within that child were destroyed.

Later Mary Jane told me everything. Before the divorce hearing she had discovered her mother in a compromising position with a strange man. Love for her father, loyalty to her mother, the newly awakened sex consciousness of adolescence, the shattering of ideals, set up a line of defense that no endearments of the mother, no social contacts outside, could break down. When she returned home, her father had gone. She had lost her illusions as to the sacredness of marriage. She knew no standards except those of commercialized promiscuity. So she quickly passed from the once loving arms of her father to the passionate embraces of lovers her mother secured. Ashamed of all this, she set out to find her pal, but he had died during an attack of pneumonia, and her mother had forgotten to mention the incident. So, at sixteen, disillusioned, unhappy, promiscuous, she lay a sacrifice on the altar of ill-advised custody — a shameful reminder of careless, unintelligent treatment. It is to children like Mary Jane, helpless, afraid, torn between two loves, that we owe the state's expensive machinery, her expert judges, her well-equipped probation staff for investigational and intensive follow-up work.

I wish the group that remains indifferent to the potentialities of an expert staff attached to a family court could have seen Jimmy, my eight-year-old, found sleeping in a barrel filled with old rags.

"Son, what is your father's name?" A slight pause on Jimmy's part. Smilingly the interviewer insisted: "Won't you please tell me your father's name?" Jimmy edged a little nearer, half whispering into his dirty little cap so no one else could hear. "You see, it's this way. I ain't got no reg'lar pa — my folks ain't livin' together." He blinked hard to discourage the tears.

"No reg'lar pa!" The cry of thousands of children, unhappy, puzzled, half ashamed as they whisper this baffling fact: "My folks ain't livin' together." They have been robbed of a mother's love or a father's deep interest, because as yet no individual, no social agency, no socialized court anywhere has been adequately equipped to handle this delicate, complex family situation intelligently and constructively.

Our dream? Judges with the vision of happy children always before them; subtle, trained workers with a psychological understanding of unadjusted fathers and mothers; real homes where there is cuddling, love, and joy, where the Mary Janes and the Jimmies are free to laugh and cry and play and grow.

LIV. MARRIAGE IN MIDDLETOWN [1]

BY ROBERT S. LYND AND HELEN M. LYND

IN each of Middletown's homes lives a family, consisting usually of father, mother, and their unmarried children, with occasionally some other dependents. These family groups are becoming smaller. According to the Federal Census, which defines a family as one person living alone or any number of persons, whether related or not, who live together in one household, Middletown families shrank from an average of 4.6 persons in 1890 to 4.2 in 1900, to 3.9 in 1910, and 3.8 in 1920. Both the decrease in the number of children and the decline in the custom of having other dependents in the home are factors in this change.[2] The forty business class families interviewed by the staff in 1924 averaged 4.7 persons and the 124 working class families 5.4, but only those families were interviewed which had one or more children of school age.

Within the walls of each house this small family group carries on the activities concerned with sex, child-rearing, food, clothing, sleep, and to some extent play and religion. These activities center about the institution of marriage.

---

[1] From *Middletown: a study in contemporary American culture*, by Robert S. and Helen Merrell Lynd, copyright 1929 by Harcourt, Brace and Company, Inc., pages 110–130.

[2] Fewer "old-maid" sisters live with married relatives now, when women commonly work outside the home for pay, move about town freely at night unescorted, and live in small flats of their own. Smaller houses without "spare" rooms are diminishing the custom, according to the head of the Social Service Bureau, of having elderly parents live in the homes of married children. This modern tendency towards the non-support of parents was openly recognized in 1920 when, among the recommendations made by the State Board of Charities and Correction to the legislature, was one stating that "We believe that there should be legislation to prevent the abandonment of parents by children who are able to support them."

The presence of outsiders as boarders at the family table is somewhat less sanctioned today, though roomers are still not uncommon; business class families who take in roomers are likely to do so to help pay children's expenses in college, and this explanation lessens any social stigma that may attach to this procedure.

The country over, a smaller percentage of the population is unmarried today than a generation ago, and while earlier figures by which the trend within Middletown can be observed are not available, in 1920 the city had a smaller proportion of both males and females single than had either state or nation:

	Percentage single males constitute of all males aged 15 and over		*Percentage single females constitute of all females aged 15 and over*	
	1890	*1920*	*1890*	*1920*
United States, all classes	41.7	35.1	31.8	27.3
United States, urban	Not available	35.5	Not available	29.0
State, all classes	38.9	30.9	29.6	23.9
State, urban	Not available	31.1	Not available	24.5
Middletown	Not available	28.5	Not available	20.8

While only 22.8 per cent of the population of the urban United States aged fifteen to twenty-four in 1920 were married, 31.4 per cent of this group in Middletown were married. It would appear that more people are marrying young in Middletown today. Explanation of this apparent drift toward more and earlier marriages may lie in part in such changes, noted elsewhere, as the cessation of apprenticeship, which gives a boy of eighteen a man's wages at a machine, the increased opportunities for wives to supplement the family income by working, the relatively greater ease and respectability of dissolving a marriage today, the diffusion of knowledge of means of contraception, and the growing tendency to engage in leisure-time pursuits by couples rather than in crowds, the unattached man or woman being more "out of it" in the highly organized paired social life of today than a generation ago when informal "dropping in" was the rule.

Marriage consists in a brief ceremonial exchange of verbal pledges by a man and woman before a duly sanctioned representative of the group. This ceremony, very largely religious in the nineties, is becoming increasingly secularized. In 1890, 85 per cent of the local marriages were performed by a religious representative and 13 per cent by a secular agent, while in 1923 those performed by the religious leaders had fallen to 63 per cent, and the secular group had risen to 34 per cent of the total.[1] A prominent local minister accounted for the prevalence of divorces in Middletown in 1924 by the fact that "there are too many marriages in secular offices away from the sanctity of the churches." The marriage ceremony relaxes the prohibition upon the mutual approaches of the two persons to each other's person and as regards the sexual approach makes "the wrongest thing in the world the rightest thing in the world."[1] The pair usually leave the homes of their parents at once and begin to make a home of their own; the woman drops the name of her father for the name of her husband.[2]

---

[1] Two per cent of the 1890 officiating persons and 3 per cent of the 1923 groups could not be identified. Figures here are for the entire county.

A heavy taboo, supported by law and by both religious and popular sanctions, rests upon sexual relationships between persons who are not married. There appears to be some tentative relaxing of this taboo among the younger generation, but in general it is as strong today as in the county seat of forty years ago. There is some evidence that in the smaller community of the eighties, in which everybody knew everybody else, the group prohibition was outwardly more scrupulously observed than today. A man who was a young buck about town in the eighties says, "The fellows nowadays don't seem to mind being seen on the street with a fast woman, but you bet we did then!" That all was not serene underneath, particularly after the influx of population accompanying the gas boom, appears from various items in the local press in 1890:

"In looking over the Board of Health statistics . . . I noticed in the birth records . . . that some of our prominent citizens are given the credit of being the father of offspring of which women of very loose character are the mothers."

An editor "hopes that something can be done about the large number of 'street walkers' which are to be seen every evening."

"This morning an officer requested the *Times* to state that he had of late seen a number of married men in company with disreputable characters and that after this date every one so detected will be arrested and exposed."

---

[1] Advances prior to marriage are traditionally entirely made by the man, but there is an increasing aggressiveness on the part of the girls in the activity preliminary to mating.

[2] There is occasional talk in the community of a woman's "keeping her own name," but no woman in Middletown follows this practice, and it is sharply frowned upon by the group.

By 1900 the rough-and-tumble industrial influx is reflected in the press in such headlines as "The Bowery Outdone in [Middletown]": "A traveling man who has visited both the universally notorious Bowery in New York City and the locally notorious High Street theater asserts that for downright lewdness and immorality the former is outdone by the latter."

Editorials posed the question, "What does [Middletown] need?" and answered: "Mayors and police officers who will guard boys and girls from dens of evil like High Street Theater."

The city, according to a local historian, bore an "ill repute during its early career as a manufacturing city."

A former proprietor of one of the largest saloons in the city estimates the number of houses of prostitution about 1890 as twenty-five, and an old iron-puddler estimates twenty, both agreeing on four to eight girls per house. In 1915 a state Act was passed providing for injunction and abatement of houses of prostitution, thereby driving the institution underground. Today conditions fluctuate in Middletown. Within ten years a group of public officials is reported to have conducted Middletown as a "wide-open town" in which city officials, later sent to the Federal penitentiary, were alleged to have a financial interest in "the red-light district." At the present time there are reported to be only two or three fly-by-night, furtively conducted houses of prostitution, catering exclusively to the working class, but a comparison with 1890 on this point is fruitless, because, as the judge of the juvenile court points out, "the automobile has become a house of prostitution on wheels."[1]

The choice of a mate in marriage is nominally hedged about by certain restrictions — legal, religious, and customary. Legal stipulations, substantially the same as a generation ago, prohibit marriage between a white and a negro, by an insane person, by an imbecile or epileptic, by a person having a transmissible disease, or, within certain limits, by a male who has within five years been a public charge, by a person whose former marriage has not yet been dissolved, by a person under the influence of liquor or narcotics, and by a man under eighteen or a woman under sixteen years. Other requirements implicitly recognized by law appear from the allowable grounds for dissolution of a marriage: sexual exclusiveness, living together in the same home, financial support of the wife by the husband, sufficient mutual consideration to exclude "cruel" treatment, sufficient "sobriety" and "morality" to avoid charges of "habitual drunkenness" and "criminal conviction." Religious requirements, today as in the nineties, vary somewhat from one religious group to another, but concern two main points: the nominal prohibition by Catholics of marriage "outside the Church" and a corresponding though weaker sentiment among Protestants against marriage to a Catholic; and, second, a varying but somewhat lessening emphasis upon the permanence of marriage whereby a few religious leaders refused to remarry a divorced person. Some ministers would refuse to marry persons living in "open [sexual] sin," though the marriage ceremony is commonly regarded as the accepted means of regularizing such individuals.

---

[1] The description in the *Cleveland hospital and health survey* of this new type of prostitution to some extent among girls nominally employed at other occupations probably applies in a general way to Middletown; it concludes, "How far the activities of such amateur prostitutes make up for the reduction in the activities of the professionals no one knows. The doctors testify, however, that a large number of their men patients claim to have been infected by such amateurs." — Part V, "Venereal disease," Cleveland Hospital Council, 1920, pages 420–421.

Further informal demands, made by the fluid sentiments of the group, have apparently altered little since the nineties, although they have been given somewhat greater legal recognition.[1] Foremost among these is the demand for romantic love as the only valid basis for marriage. Theoretically, it is the mysterious attraction of two young people for each other and that alone that brings about a marriage, and actually most of Middletown stumbles upon its partners in marriage guided chiefly by "romance." Middletown adults appear to regard romance in marriage as something which, like their religion, must be believed in to hold society together. Children are assured by their elders that "love" is an unanalyzable mystery that "just happens" — "You'll know when the right one comes along," they are told with a knowing smile. And so young Middletown grows up singing and hearing its fathers sing lustily in their civic clubs such songs as:

---

[1] Loss of affection after marriage was not legally recognized as sufficient reason for dissolving a marriage until recent years, but in 1924 divorces were granted to couples who came into court frankly saying, "We have no affection for each other and do not want to live together," and "She says she does not love me and does not want to live with me."

It had to be you,
It had to be you.
I wandered around and finally found
The Somebody who
Could make me true, could make me blue,
And even glad just to be sad
Thinking of you.
Some others I've seen might never be mean,
Might never be cross, or try to be boss,
But they wouldn't do,
For nobody else gave me a thrill.
With all your faults I love you still.
It had to be you, wonderful you,
It had to be you.

And yet, although theoretically this "thrill" is all-sufficient to insure permanent happiness, actually talks with mothers revealed constantly that, particularly among the business group, they were concerned with certain other factors; the exclusive emphasis upon romantic love makes way, as adolescence recedes, for a pragmatic calculus. Mothers of the business group give much consideration to encouraging in their children friendships with the "right" people of the other sex, membership in the "right" clubs, deftly warding off the attentions of boys whom they regard it as undesirable for their daughters to "see too much of," and in other ways interfering with and directing the course of true love.

Among the chief qualifications sought by these mothers, beyond the mutual attraction of the two young people for each other, are, in a potential husband, the ability to provide a good living, and, in a wife of the business class, the ability, not only to "make a home" for her husband and children, but to set them in a secure social position. In a world dominated by credit this social function of the wife becomes, among the business group, more subtle and important; the emphasis upon it shades down as we descend in the social scale until among the rank and file of the working class the traditional ability to be a good cook and housekeeper ranks first.

"Woman," as Dorothy Dix[1] says, "makes the family's social status. . . . The old idea used to be that the way for a woman to help her husband was by being thrifty and industrious, by . . . peeling the potatoes a little thinner, and . . . making over her old hats and frocks. . . . But the woman who makes of herself nothing but a domestic drudge . . . is not a help to her husband. She is a hindrance . . . and . . . a man's wife is the show window where he exhibits the measure of his achievement. . . . The biggest deals are put across over luncheon tables; . . . we meet at dinner the people who can push our fortunes. . . . The woman who cultivates a circle of worth-while people, who belongs to clubs, who makes herself interesting and agreeable . . . is a help to her husband."

---

[1] References will be made to Dorothy Dix from time to time in the following discussion of what the group demands of marriage. Day after day two columns of syndicated advice to "Desolate," "A Much-disturbed Husband," "Young Wife," etc., appear in the leading Middletown paper from this elderly lady. This is perhaps the

Not unrelated to this social skill desired in a wife is the importance of good looks and dress for a woman. In one of Marion Harland's *Talks*, so popular in Middletown in the nineties, one reads, "Who would banish from our midst the matronly figures so suggestive of home, comfort, and motherly love?" Today one cannot pick up a magazine in Middletown without seeing in advertisements of everything from gluten bread to reducing tablets instructions for banishing the matronly figure and restoring "youthful beauty." "Beauty parlors" were unknown in the county seat of the nineties; there are seven in Middletown today.

"Good looks are a girl's trump card," says Dorothy Dix, though she is quick to add that much can be done without natural beauty if you "dress well and thereby appear 50 per cent better looking than you are . . . make yourself charming, and cultivate bridge and dancing, the ability to play jazz and a few outdoor sports."

Emphasis upon the function of the man in marriage as "a good provider" and of the woman as home-maker, child-rearer, and, among the

---

most potent single agency of diffusion from without shaping the habits of thought of Middletown in regard to marriage and possibly represents Middletown's views on marriage more completely than any other one available source. Of the 109 wives of working men interviewed giving information on this point, 51 said that they read Dorothy Dix regularly and 17 occasionally, while of 29 wives of the business class answering on this point 16 read this column regularly and 10 occasionally. Her advice is discussed by mothers and daughters as they sew together at Ladies' Aid meetings, and many of them say that her column is the first and sometimes the only thing which they read every day in the paper. Her remarks were quoted with approval in a Sunday morning sermon by the man commonly regarded as the "most intellectual" minister in town.

bulk of the business group, social pace-setter, is far-reaching as affecting the attitude of the sexes toward each other. In general, "brains" tend to be regarded as of small importance in a wife; as one of the city's most "two-fisted" young business men announced to the high-school seniors at a Rotary high-school "chapel," "The thing girls get from high school is the ability to know how to choose a 'real one' from a 'near one.' When a girl gets around eighteen or so I begin to expect her to get married."

Middletown husbands, when talking frankly among themselves, are likely to speak of women as creatures purer and morally better than men but as relatively impractical, emotional, unstable, given to prejudice, easily hurt, and largely incapable of facing facts or doing hard thinking. "You simply cannot criticize or talk in general terms to a woman," emphatically agreed a group of the city's most thoughtful men. "There's something about the female mind that always short-circuits a general statement into a personal criticism." A school official, approached regarding the possibility of getting a woman on the school board, replied that "with only three people on the board, there isn't much place for a woman." In a group of prominent Middletown men, a suggested new form of social grouping came up in conversation and was promptly downed because "the women couldn't abide by it. Woman is the most unselfish creature on earth within her family, but with outsiders she is quick to imagine snubs to her family, bristle up, and become unsocial."

Middletown wives appear in part to accept the impression of them that many of their husbands have. "Men are God's trees; women are his flowers," and "True womanliness is the greatest charm of woman," the recent mottoes of two of the local federated women's clubs, suggest little change from the prevailing attitude reflected in a commencement essay in 1891, "Woman is most perfect when most womanly."[1] At a local political dinner the talk about one of the tables turned to women's smoking, and a woman politician said with an air of finality: "Women have to be morally better than men. It is they who pull men up or cause their downfall." Women, on the other hand, are frequently heard to express the opinion, accompanied by a knowing smile, that "Men are nothing but big little boys who have never grown up and must be treated as such."

---

[1] The following is part of a tribute to a woman read with general approval at the close of a meeting of another of the local women's federated clubs in 1924: "There is a being, the image and reflection of whom is ever present in the mirror of my soul. Her words are like enchanted echoes in a beautiful dell and her laughter like the sweetness of the bursting magnolia and her beauty like the smiling violet and the laughing morning-glory. The sound of her footstep is like that of a messenger bearing gifts from a queen, and her touch like the gentle zephyrs fanning the tired brow of a weary traveler, and her presence like an altar of holiness and benediction. That spirit has taught me to revere heaven's divinest gift to the world — womanhood."

In general, a high degree of companionship is not regarded as essential for marriage.[1] There appears to be between Middletown husbands and wives of all classes when gathered together in informal leisure-time groups relatively little spontaneous community of interest. The men and women frequently either gravitate apart into separate groups to talk men's talk and women's talk, or the men do most of the talking and the women largely listen. Even since women have been allowed to vote with men, some tendency persists for women of all classes to depend in such practical matters upon the opinions of their husbands "coming in from the outside," as Dorothy Dix puts it, "with the breath of the fighting world about them."

Companionship between husband and wife in sheer play varies greatly in different families; among the business group who belong to the country club, e.g., husbands frequently play eighteen holes of "real golf" with a male "foursome" Sunday morning and possibly a concessionary "one round with the wife in the afternoon just to make her feel good." One wife who makes "a definite effort to do things" with her husband says that she has achieved this at the cost of cutting herself off from much of the routine social life of the community:

> My husband, my children, and what community work I have time for after them are my job. I have gradually withdrawn from the social activities of the wives of my husband's business associates because most of these women seem absorbed in activities that do not include their husbands. That is just the sort of thing that leads to the break-up of families, and I don't see why I and my family should be exempt from the things that befall other people.

---

[1] It may not be wholly fantastic to surmise that there may be some significance for the understanding of the basis of local marital association in the hierarchy of terms by which local woman speak of their husbands. There is a definite ascent of man in his conjugal relations as one goes up in the social scale, from "my old man" through "the man," "he" (most frequent), "the mister," "John," "my husband," to "Mr. Jones." The first four are the common terms among the working class families and the last two among business class families.

One of the commonest joint pursuits of husbands and wives is playing cards with friends. A few read aloud together, but this is relatively rare, as literature and art have tended to disappear today as male interests. More usual is the situation described by one prominent woman: "My husband never reads anything but newspapers or the *American Magazine.* He is very busy all day, and when he gets home at night he just settles down with the paper and his cigar and the radio and just rests." The automobile appears to be an important agency in bringing husbands and wives together in their leisure, counteracting in part the centrifugal tendency in the family observable in certain other aspects of Middletown's life.

Among the working class, leisure activities and other relations between married couples seem to swing about a somewhat shorter tether than do those of business folk. Not infrequently husband and wife meet each other at the end of a day's work too tired or inert to play or go anywhere together; many of them have few if any close friends. In families where there is some financial leeway there are plans for an addition to the house or perhaps the possibility of normal school for the children, which are spontaneous centers of interest and conversation between husband and wife; in the 60 out of 122 families reporting who had automobiles, these and the trips they make possible form a chief center of interest; in some cases there is talk of lodge affairs or the movies. But if, as in many families, the necessities of shelter and food overshadow other plans, such conversation as there is may be of a bickering sort, or may lapse into apathetic silence. In a number of cases, after the interviewer had succeeded in breaking through an apparently impenetrable wall of reserve or of embarrassed fear, the housewife would say at the close of the talk, "I wish you could come often. I never have anyone to talk to," or "My husband never goes any place and never does anything but work. You can talk to him, but he never says anything. In the evenings he comes home and sits down and says nothing. I like to talk and be sociable, but I can hardly ever get anything out of him."[1]

This frequent lack of community of interests, together with the ideas each sex entertains regarding the other, appears in many families in a lack of frankness between husband and wife, far-reaching in its emotional outcome. "One thing I always tell my young men when they marry," said the only one of the six leading ministers who gives any instruction to people he marries, "is that they must get over any habit of thinking that they must be frank and tell everything they know to their wives." Dorothy Dix urges: "'Let well enough alone' is a fine matrimonial slogan, and as long as husband and wife are good actors, it is the part of wisdom for their mates not to pry too deeply into the motives that inspire their conduct. . . . What we don't know doesn't hurt us in domestic life, and the wise do not try to find out too much." And again, "Nothing does more to preserve the illusions that a man and woman have about each other than the things they don't know."

---

[1] This is the kind of maladjustment which may later figure in the divorce courts as "cold, grouchy, never says anything" or may lead to more violent reactions which figure as "cruel treatment."

Traditionally this institution of marriage is indissoluble. "What God hath joined together let no man put asunder," commands the religious marriage ritual. But the trend toward secularization noted in the performance of the marriage ceremony appears even more clearly in the increased lifting of the taboo upon the dissolution of marriage. With an increase, between 1890 and 1920, of 87 per cent in the population of the county in which Middletown is located, the number of recorded divorces for the four years 1921–1924 has increased 622 per cent over the number of divorces in the county in the four years 1889–1892. There were nine divorces for each hundred marriage licenses issued in 1889, and eighteen in 1895. After fluctuating about the latter figure for fifteen years, the total in 1909 first passed twenty-five divorces for each hundred marriage licenses, and six years later thirty. In 1918 it was fifty-four for each hundred marriage licenses; 1919, thirty-nine; 1920, thirty-three; 1921, fifty-five; 1922, forty; 1923, thirty-seven; 1924, forty-two.[1]

---

[1] These figures do not take into consideration the number of divorce suits filed. In 1924, e.g., 477 married couples sought divorces in the county, while 644 couples married — seventy-four couples seeking to dissolve marriage for each hundred couples seeking to marry. In March, 1925, fifty divorce actions were filed and only forty-four marriage licenses issued. Middletown's behavior in this regard is part of a national trend; according to the *Journal of Social Hygiene*, "Thirty-one years ago the ratio of divorce to marriage was one to 14.8. Ten years later, in 1905, the ratio was one divorce for every 6.7 marriages. For approximately the last fifty years, the period for which fairly accurate statistics are obtainable, the number of divorces has steadily

The frequency of divorces and the speed with which they are rushed through have become commonplaces in Middletown. "Anybody with twenty-five dollars can get a divorce" is a commonly heard remark. Or, as one recently divorced man phrased it, "Anyone with ten dollars can get a divorce in ten minutes if it isn't contested. All you got to do is to show non-support or cruelty and it's a cinch." Following are typical Sunday morning headlines after what the newspapers are wont to call the "usual Saturday morning grind": "Court hears eighteen divorce suits; ten decrees granted and five dismissed, others pending." "Only one divorce case (out of twelve) is dismissed; decrees granted in all other suits." "Another grist of divorces ground out by Judge ——." "Judge —— hears six complaints for divorce; five decrees issued." "Twenty-one divorce suits scheduled for hearing next Saturday." "Woes of nine couples heard; five husbands and three wives granted divorces; one suit dropped."

Such casual comment is in marked contrast to the attitude of a generation ago, when the state statistician in presenting the annual divorce figures for the state in the *Third biennial report* (for 1889–1890) says, "The following is the repulsive exhibit." Apparently this growing flexibility in attitude towards the marriage institution reacts back upon itself; one factor in the increasing frequency of divorce is probably the growing habituation to it.[1]

Some conception of the maladjustments underlying the decision of so many Middletown couples to terminate their marriage may be gained from the records of the courts,[2] combined with comments of the women

---

tended to approach the number of marriages." (Vol. XIII, No. 1, January, 1927, page 42.)

Middletown is not a Reno. There is no appreciable influx of people from outside the county seeking divorces.

[1] Of the sixty-one wives of working men who expressed opinions concerning reasons for the prevalence of divorce, seventeen thought that marriage is "too easy" and five that divorce is "too easy." Fourteen gave "women's working" as the chief factor in divorces, and fourteen "frivolity." The other eleven women gave as the principal reason: "unemployment," five; "sin," three; "extravagance," two; "wanting things they can't afford," one.

[2] It is not intended here to take the conventional forms under which divorce cases are pleaded as anything more than very roughly suggesting the real issue between the husband and wife. Often the real reason is pretty thoroughly disguised. Thus

interviewed on their efforts at marital adjustment. "Cruel treatment" is the "cause" assigned for the largest percentage of divorces for the county in which Middletown is located; a comparison of the stated causes for which divorces were granted in the two four-year periods 1889–1892 and 1919–1922 shows that marriages dissolved because of alleged cruelty have increased from 30 per cent to 52 per cent of the total.[1] A charge of "cruelty" may cover almost any variety of marital maladjustment, and the increase in divorces on this charge probably indicates chiefly a growing flexibility which allows divorces on other than specific charges such as "adultery" and "abandonment." It is impossible to say to what extent this charge is connected with the sex relation, but it seems probable that, in some cases at least, the connection is close. Many of the women interviewed voiced opinions similar to the statement of one woman: "Women never used to talk to each other about such things. Every woman used to think that other women had to put up with what she did because that is the way men are. Now they are beginning to wonder." Time and time again the wife of a working man spoke with obvious emotion of the fact that the responsibility for the prevention of pregnancy was placed entirely upon her by a non-coöperative husband.

Traditionally, voluntary control of parenthood is strongly tabooed in this culture, as is all discussion of sexual adjustment involved in mating, but this prohibition is beginning to be somewhat lifted, a fact perhaps not unrelated to the increasing secularization of marriage noted above. The widely divergent habits of different persons in regard to control of parenthood reveal strikingly the gap found in so many cases to exist between the habits of different groups of people living together in the same community. All of the twenty-seven women of the business class who gave information on this point used or believed in the use of some method of birth control and took it for granted. Only one woman spoke

---

one man who was divorced for "non-support" stated privately that "She and I split up over the G—— d—— Klan. I couldn't stand them around any longer."

[1] This trend towards relatively more divorces for "cruelty" is apparently part of a long-term national trend. According to *Marriage and divorce, 1887–1906*, "A comparison of the earliest five-year period, that from 1867 to 1871, with the latest, that from 1902 to 1906, shows that adultery has decreased in relative importance as a cause, while cruelty has increased." — Department of Commerce Bulletin, No. 96, Second Edition, Revised and Enlarged, 1914, pages 30–31.

of being uncertain as to whether she had been wise in limiting her family as she had. Of the seventy-seven wives of workers from whom information was secured on this subject, only thirty-four said that they used any means of birth control; of these twelve were "careful," two used primitive practices, only twenty used artificial means that might be considered moderately scientific, and only half of these last employed means of the sort utilized by the business class. Of the forty-three not using any means of birth control, fifteen vaguely approved of contraception but did not use it, because they thought it unnecessary in their individual cases; fifteen definitely disapproved; four were ignorant of all contraceptives except such as their husbands were unwilling to use; and nine were eager for some means of control but totally ignorant of any.

The following answers are characteristic of the women who definitely disapprove of use of contraceptives:

"God punishes people who deliberately try not to have children."

"Large families are hard, but it's wrong to do anything about it. I'll take what's sent me."

"Abortion is murder, and birth control is just as bad."

"I'd like a small family, but it's not good for a person's health to do anything to prevent having children."

"God told Eve to be fruitful and multiply, and if he had wanted her to regulate the number of children he would have told her so. I have had eleven children, and there ain't nobody has better health than I have. He often says how much better off I am than if I had taken things as some do."

Judging from the fact that a number of those who had tried to use some kind of contraceptives had been unsuccessful in preventing conception and from certain vague statements which had to be listed as "Not answered," the following comments of some of these women seem to suggest an underlying bewilderment considerably more widespread and more pervasive of the rest of their lives than the figures taken by themselves would indicate:

One wife "hopes to heaven" she'll have no more children. She said that people talked to her about contraceptives sometimes, and she told "him" what they said, but he said it was none of their business. She had never dared ask him what he thought about birth control, but thought he disapproved of it. She would "die" if she had any more children, but she is doing nothing to prevent it.

"Men will not stand for use of things to prevent having children," said another. "This is one cause of divorce."

Another woman complained that the contraceptives which she obtained had not prevented her having a sixth child, and when asked why she did not try something else said, "I'm ashamed; I would never has asked for these if someone had not told me about them."

A mother of eight children had found that certain homemade contraceptives worked for three years, and then she became pregnant again. "I could not believe it. I went to the doctor just all of a tremble. My sister-in-law says these things helped her, but I guess nothing can help me. And I've been sick ever since the baby came."

A woman who has had five children in six years knew of no way to prevent pregnancy and said that her husband would not find out for her. "He doesn't care how many children I have."

A wife of twenty-two replied to the question about number of children: "We haven't any. Gracious, no! We mustn't have any till we get steady work. No, we don't use anything to prevent children. I just keep away from my husband. He don't care — only at times. He's discouraged because he's out of work. I went to work but had to quit because I was so nervous."

Another women, the wife of a molder, a tired-looking, neatly dressed woman of forty-seven with seven children, had recently had to go to work because her married daughter came back home with two children, and the burden of a family of eleven was too much for the husband. "My daughter and her husband — he's a machinist — didn't know anything about birth control, and they had a second baby and then she insisted that they keep apart until his work was regular enough to support a larger family. He wouldn't, and she left him and came home to us here while she was still nursing her second baby. I certainly believe in birth control! But I don't know anything about it. I never even heard of it until a little while ago. I sure wish I had known of it when I was young, for then he wouldn't be slaving away to support this big family, and my daughter wouldn't be in all the trouble she's in."

The behavior of the community in this matter of the voluntary limitation of parenthood — in this period of rapidly changing standards of living, irregular employment, the increasing isolation and mobility of the individual family, growing emphasis upon child-training and upon education and other long-term family plans such as insurance and enforced home ownership on a time-payment basis — presents the appearance of a pyramid. At the top, among most of the business group, the use of relatively efficacious contraceptive methods appears practically universal, while sloping down from this peak is a mixed array of knowledge and ignorance, until the base of ignorance is reached. Here fear and worry over pregnancy frequently walk hand in hand with discouragement as to the future of the husband's job and the dreaded lay-off.[1]

Although the court records show that the proportion of divorces for a listed cause of "non-support" has remained stationary since 1890, according to a Middletown lawyer handling many divorce cases, "75 per cent of the people seeking divorces are women, and two-thirds of the women ask divorce for non-support." Talks with the women interviewed would seem to indicate that economic considerations figure possibly more drastically than formerly as factors in divorce. This does not necessarily mean that the husband has failed to provide food and shelter for his wife, but it does indicate that in some way their economic adjustment has broken down and that the wife would rather get her own living than continue trying to seek an adjustment with her husband. The frequent lack of frankness between husband and wife noted above appears often in the handling of money matters; adjustments like the following, if not actually the rule, are common:

A business man's wife said that she "used to believe there was no reason why a woman should not work if she wanted to and that it isn't necessary for a man to have a woman dependent upon him to make a fine character of him, as husband and wife could be held together simply by their mutual affection. I believe now, though, that a man simply gets into the habit, when his wife is not economically dependent, of believing that she doesn't need money, and so he goes and spends it on some other woman."

---

[1] It might be suggestive to inquire into the possible relation between a highly competitive medical profession in a pecuniary society and the lack of diffusion of knowledge of methods of contraception.

A wife of one of the less prominent business men, a self-respecting woman with children in college, said in a tone of finality: "I never let my husband tell me anything about business matters."

The economic status of many of these women is reflected in the following appeal by one of them to the members of the missionary society of the largest church in town: "Ask your husbands, who spend much on cigars and tobacco, for pennies for your mite boxes."

The wife of a foreman, a capable-looking woman with children in high school, said to the interviewer, "Marriage ought to be a partnership, but we started out wrong by not sharing money matters. My husband doesn't believe in telling such matters. I don't know either how much he is earning or how much we save. I just know we are saving, and that is all. It was because of this that I went to work. I liked having my own money, and my husband hated my having it. Men are to blame for women going out to work. They haven't treated their wives fairly."[1]

With the spread of the habit of married women's working, women are less willing to continue an unsatisfactory marital arrangement. Said the lawyer quoted above, "If a woman has ever worked at all, she is much more likely to seek a divorce. It's the timid ones that have never worked who grin and bear marriage. Unemployment always increases the number of women seeking a divorce.[2] In one sturdy, self-respecting family the daughter of twenty-three and the son of twenty-one have both been married and divorced and are living at home again:

---

[1] There are a few families at the other extreme in which the husband turns over his pay check to his wife and she has entire charge of the household economy, but these are rare. In between these two extremes are all manner of provisional, more or less bickering, agreements.

[2] How attractive an alternative staying unmarried and earning one's own living appears to some Middletown women is reflected in the comment of the wife of a worker who has had no unemployment since 1917, a woman of forty-one with four children, owning a car and a two-story home free of encumbrances: "A woman doing housework is never through. She can't ever dress up, and she hasn't any interest except in her home. A friend of mine with a good job in [the leading department store] married not long ago at thirty-four and I said to her, 'Why in the world do you want to get married at your age when you've got a good position?'"

The growing independence of women was succinctly described by a dismayed citizen recently divorced by his "woman": "Everybody's getting a divorce. Why should a woman stay married if she don't like a man and can get a job? Why, there's so many working, it's getting so a man can't get a woman to fry him a piece of meat or bake a pie!"

"My daughter's husband," said the mother, "is at the house six days a week, and they have an awfully good time together, but they just couldn't get on about money matters. Now she has her own money and he has his and there's no trouble. That was the trouble with my son and his wife, too. They split up over money." This boy and girl had gone to public school until they were fourteen and fifteen respectively; but in this matter of handling money, the thing that had shaped them had apparently been their parents' example. The mother replied to the question as to her husband's income, "Would you believe it, I don't know any more than you do — and married to him all these years! Mrs. —— was saying the other day she wouldn't stand it. But she doesn't know my man! He's that close-mouthed! He gives me ten dollars a week for myself, and I get the children's board money. He pays some bills. I only know we aren't saving anything. I looked in the bank book and there hasn't been an entry in two years."

The older generation in this family had weathered a marriage that was not economically satisfactory, but the present generation is less content with such maladjustment today when spending-money is more in demand, jobs for women common, and divorce easy.

Like "cruelty" and "non-support," "adultery" and "abandonment" as alleged grounds of divorce indicate not isolated phenomena but a wide complex of factors leading to the failure of husband and wife to achieve an adjustment. "Before the deserter there was a broken man," said a district secretary. . . . By this characterization she meant not necessarily a physical or mental wreck, but a man bankrupt for the time being in health, hopes, prospects, or in all three.[1] It is significant that divorces for these specific causes are relatively less frequent today, while divorces for "cruelty" and unclassified causes have increased.

The increasing number of divorces today for any of these alleged causes may indicate that a larger proportion of husbands and wives than formerly are failing to achieve a marital adjustment, or that people are tending to demand more of a tolerable marriage, and failing to achieve an adjustment, seek the divorce courts. Many people in Middletown would probably agree with Dorothy Dix that:

---

[1] Joanna C. Colcord, *Broken homes*, Russell Sage Foundation, 1919, page 17.

> The reason there are more divorces is that people are demanding more of life than they used to . . . In former times . . . they expected to settle down to a life of hard work . . . and to putting up with each other. Probably men are just as good husbands now as they ever were, but grandmother had to stand grandpa, for he was her meal ticket and her card of admission to good society. A divorced woman was a disgraced woman. . . . But now we view the matter differently. We see that no good purpose is achieved by keeping two people together who have come to hate each other.

These greater demands on life, emphasizing inadequacies in marriage, rest back upon many other changes in the life of the city.

The way in which these antecedents of divorce are imbedded in the whole complex of Middletown's culture touching the adjustments between a man and his wife is suggested by comparing what Middletown regards as minimum essentials of marriage with conditions actually existing in many Middletown homes, particularly those of the working class, among whom, according to lawyers handling divorce cases, divorce is more frequent. The husband must "support" his family, but, as pointed out above, recurrent "hard times" make support of their families periodically impossible for many workers; the wife must make a home for her husband and care for her children, but she is increasingly spending her days in gainful employment outside the home; husband and wife must cleave to each other in the sex relation, but fear of pregnancy frequently makes this relation a dread for one or both of them; affection between the two is regarded as the basis of marriage, but sometimes in the day-after-day struggle this seems to be a memory rather than a present help. Not one of the sixty-eight working class wives mentioned her husband in answering the question as to the things that give her "courage to go on when thoroughly discouraged."[1] More than one wife seems to think of her husband less as an individual than as a focus of problems and fears — anxiety about loss of job, disappointment over failure in promotion, fear of conception — the center of a whole complex of things to be avoided. To many husbands their wives have become associated with weariness, too many children, and other people's washings. It is out of such situations that the incidents which appear in the divorce courts as "cruel treatment," "abandonment," and "adultery" frequently arise. The effect of these various types of emotional maladjustment upon getting a living, child-rearing, and other activities can hardly be overestimated.

---

[1] The nearest approach of any women to thought of her husband was in the answer of one who said, "I think that when evening comes we'll all be together again." Very few business class women answered this question. No woman of either business or working class mentioned spending time with her husband as among the things she would like to do with an extra hour in the day.

And yet it is easy by emphasizing only the more obvious and accessible facts to form a distorted picture of these Middletown homes. For a large number of them disappointment and anxiety may lurk steadily in the background, but they are not forever in the foreground. However drab or shadowed by fear these homes may be, there are always the plans for today and tomorrow, the pleasures of this half hour, the "small duties and automatic responses to the custom of the daily round of living [which] imperceptibly but surely mitigate the tragedies and disappointments of existence."

Indeed it might seem that in many homes this response to custom is the most marked characteristic of marriage. There are some homes in Middletown among both working and business class families which one cannot enter without being aware of a constant undercurrent of sheer delight, of fresh, spontaneous interest between husband and wife. But such homes stand out by reason of their relative rarity. In others where this quality is less apparent, marriage is doubtless the deepest reality in the lives of the pair. For many couples, however, for whom thought of the divorce court may never figure even as a remote possibility, marriage seems to amble along at a friendly jog-trot marked by sober accommodation of each partner to his share in the joint undertaking of children, paying off the mortgage, and generally "getting on."

LV. RURAL STANDARDS OF LIVING

1. LIVING CONDITIONS IN THE POORER AGRICULTURAL SECTIONS[1]

By C. E. Allred

Professor of Agricultural Economics, University of Tennessee

In presenting this topic for discussion the Joint Committee further outlined the subject by asking the following questions: "Should the state attempt to furnish equal opportunities for education, health, communication, etc., to people in the poorer agricultural districts, and if so should it not limit the occupation of lands which are far below the margin of profitable production?"

This is a very important topic, there are many angles to it, and the writer has given it considerable study; such being the case, the difficulty immediately appears as to how the subject can be adequately covered in the limited space at his disposal. To meet this situation he has decided to present an *outline* of the topic only, without commenting on any of its various phases.

The outline will be presented under three heads, as follows:

1. The problem — the social effects of poor agricultural areas. In presenting the outline under this head the writer will simply mention the various effects which his investigations have found in *some* of the poor areas. All of these deleterious effects are not found in any one area, but in some of the poorest sections a very large number of them are to be seen. (Unfortunately, several of these pathological conditions are to be found also in some of the richer agricultural areas; the point that is made here is *not* that these symptoms are found only in the poor sections, but that they are so frequently found in the very poor areas as to be a fairly accurate description of conditions in many of them.)

---

[1] Reprinted by permission from *Farm income and farm life*, a symposium on the relation of the social and economic factors in rural progress, prepared by a joint committee, Dwight Sanderson, Chairman and Editor, University of Chicago Press, 1927, pages 169–189.

2. Arguments which have been advanced for state aid in giving rather complete equality of social opportunities for the poorer regions.

3. The arguments which have been advanced against such an attempt by the state.

In presenting the outlines under the last two headings the writer will not have space to give his own opinion of the relative value of each point made, but will leave to the reader such evaluation of the points presented.

I. How Do the Economic Limitations of the Poorer Agricultural Sections Affect Social Conditions?

1. Population.
    - (1) The population is scattering and sparse, which —
        - *a.* Lessens social contact.
        - *b.* Causes long distances between schools.
        - *c.* Makes consolidation of schools difficult.
        - *d.* Makes high per capita cost of schools.
        - *e.* Makes high per capita cost of roads.
    - (2) Population necessarily must remain sparse; thus the boys and girls must go a long way from home for profitable employment.
    - (3) The rural exodus is great from these regions, thus breaking up homes and often causing the girls and boys to get into trouble in the city.
    - (4) Refined and efficient people will not readily move in; hence these regions often lack good leadership.
2. Characteristics of the People.
    - (1) Lack of ability to travel makes the people awkward in society, in speech, acts, and movements.
    - (2) Fakers find readier listeners in these areas.
    - (3) The people are ignorant and more easily controlled by corrupt politicians.
    - (4) Lack of ideals causes low standard of living.
    - (5) There is a great deal of intermarrying of relatives, due to lack of wide acquaintanceship.
    - (6) Law enforcement is often difficult.
        - *a.* These areas act as harbors for inefficient, weak-minded and criminals, thus damaging near-by regions.

    - *b.* Lack of observance of game laws, etc.
    - *c.* Lawlessness, moonshining, and feuds are often found.
    - *d.* The people are sometimes largely ignorant of government operation and laws.
  - (7) Illegitimacy is very frequently found.
  - (8) Laziness and inefficiency are prevalent.
  - (9) Families are larger than elsewhere. Poor education causes low standard of living and ignorance of control measures.
  - (10) Poor people get on to the poor land; hence these are the inefficient. Many are feeble-minded.
  - (11) People often have very little political influence to secure needed legislation.
  - (12) Patriotism is sometimes low in such regions.
  - (13) Send poor representatives to govern the county, to the state legislature, etc.
  - (14) Coöperation with improvement agencies, such as county agents, is not readily given.
  - (15) The people are dissatisfied with things as they are, and such a condition is dangerous to our government.
  - (16) The people, and especially the children, are often looked down upon by people of other regions.

3. Living Conditions.
  - (1) People sell their best products and consume what they cannot sell.
  - (2) Food is often very poorly cooked and prepared.
  - (3) Ration of people, and especially of the children, is often not properly balanced.
  - (4) Outhouses are often poor or none at all.
  - (5) Poorly constructed houses, drafty in winter.
  - (6) Houses, barns, fences, etc., are unpainted, causing them to be unattractive and to deteriorate.
  - (7) Home conveniences are few and crude, causing —
    - *a.* Hard labor for women.
    - *b.* Lack of recreation for women.
  - (8) Clothing.
    - *a.* Often insufficient.

      b. Of poor quality.
      c. Ill fitting.
   (9) Living rooms poorly lighted and ventilated.
   (10) No pictures of esthetic value on the walls.
   (11) Farm equipment is scant, causing —
      a. Hard labor.
      b. Inefficient labor.
   (12) Owing to unsatisfactory home conditions the children leave home before they get an education — and also before the age of discretion.

4. Labor Conditions.
   (1) Women have to work in the fields.
   (2) Children are overworked.
      a. Early child labor required.
      b. Have to work too hard.
      c. Lose time out of school to work.
   (3) Greater effort required per unit of product; hence rewards of labor are low.
      a. Wage scale is low.
      b. Long hours required.
   (4) Workers are very inefficient, due to ignorance, to improper diet, and to lack of machinery.
   (5) The men are often lazy and shiftless and depend on the women and children for their support.
5. Education.
   (1) Poor schoolhouses.
      a. Inadequately heated.
      b. Poor seats.
      c. Not properly lighted.
   (2) Schools have no libraries, laboratory facilities, manual training facilities, toilets, water supply, etc.
   (3) School grounds often have no shade, and generally are not landscaped.
   (4) People often so poor they cannot buy schoolbooks.
   (5) People know little of the world.
   (6) Knowledge of current events is very limited.

- (7) Application of science is almost unknown.
- (8) But little interest taken in education.
- (9) Parents are unable to educate girls well and hence —
  - *a.* When the girls go to the city they must take menial jobs and frequently become prostitutes.
  - *b.* When the boys go to the city they are unable to earn as much money as the bright lights cause them to want and they often become criminals.
- (10) Teachers do not provide leadership, as they are poorly trained themselves.
- (11) Cannot pay for efficient teachers.
- (12) Level of business ability lowered by lack of education and travel and reading.
- (13) Illiteracy is high, with all its ill effects.
- (14) Pastures are poor, and but little live stock often kept. Live stock have a civilizing influence.
- (15) But little pure-bred live stock to act as stimulus.
- (16) Children seldom have a chance to get a college education.
- (17) Very little incentive or inspiration for the young people who live there, unless they get a vision of the outside world.
- (18) A vicious cycle takes place: small education, small profits, small improvement of land, low taxable values, and hence poor schools.

6. Health.
   - (1) People cannot take proper care of health, due to poverty.
   - (2) Children often stunted, due to improper diet and hard work.
   - (3) Children go barefoot and sometimes get hookworms.
   - (4) Pellagra often found in both old and young, due to inadequate diet.
   - (5) Epidemics are hard to control there.
   - (6) People do not realize seriousness of disease and hence do not take adequate precautions.
   - (7) Greater exposure to weather, resulting in sickness.
   - (8) No mosquito bars for children.
   - (9) Houses not screened.
   - (10) Houses too small for adequate sleeping quarters. This not only

causes ill health from respirational diseases but is an environment of familiarity which naturally leads to prostitution.

(11) Improper ventilation for sleeping.

(12) The water supply is often contaminated and is very seldom protected from such contamination; it usually comes from springs and shallow wells.

(13) Do not gain knowledge of how to preserve health.

(14) High infant mortality rate.

(15) Adequate medical aid not available.

(16) Adequate dental aid not available.

(17) There are no medical specialists in such regions.

(18) Cannot pay for medical attention when sick — doctors, nurses, hospitals, etc.

(19) No hospital facilities near at hand.

(20) People never have periodic, competent health examinations.

7. Churches.
    (1) Church services infrequent, often only once per month.
    (2) Churches are inadequately heated, have poor seats, and very unattractive interiors.
    (3) Poorly trained preachers.
    (4) General religious spirit is low, and often a surly attitude prevails.
    (5) Church grounds not attractively landscaped.
    (6) No continuous religious activities by a resident pastor.
    (7) Often no Sunday school, young people's meeting, or prayer meeting.
8. Financial Conditions.
    (1) The cost of production is high because of —
        a. Machinery little used because of poverty.
        b. Small, rough fields.
        c. Power is inadequate (small horses, etc.).
        d. Yields are low. This results in a very narrow margin of profit and hence in a low standard of living.
    (2) The people have no reserve capital to fall back on in case of emergency.
    (3) Soil fertility is not maintained; farmers not able to finance it.

- (4) Tax rate is high and large share of income must go for taxes.
- (5) Often cannot pay poll tax and hence cannot vote.
- (6) The people cannot accumulate a fund to provide for —
  - *a.* Travel.
  - *b.* Educating children.
  - *c.* Old age.
- (7) Many old people have to go to the poorhouse in later years.
- (8) Insurance usually not carried; hence dependents thrown on charity or left very poor.
- (9) Fire, accident, and hail insurance is seldom carried.
- (10) Buying power of farmers is low, and this causes merchants and other service agencies to operate on a small scale and hence charge high prices.

9. Lack of Appreciation for the Finer Things.
   - (1) Little appreciation of good books.
   - (2) Little appreciation of nature.
   - (3) Little appreciation of art.
   - (4) Little appreciation of good music.
   - (5) Good books and good periodicals are few.
10. Recreation and Luxuries.
    - (1) Poor recreation facilities.
    - (2) Social activities are crude.
    - (3) Children deprived of many of the proper joys of childhood.
    - (4) No toys for children.
    - (5) People can have but few luxuries.
    - (6) Prostitution is often the result of inadequate recreational facilities of a wholesome nature in poor regions.
11. Service Available to the People of the Section.
    - (1) Many of the service agencies supplied by a good-sized prosperous town to its adjacent area are either not available at all, or of very poor quality.
      - *a.* No market for by-products of a perishable nature; hence no income from them.
      - *b.* Market reports not quickly and readily available.
      - *c.* Libraries are few and small.

- *d.* These counties seldom have county agents, home demonstrator, or health unit.
- *e.* County agents do little work in the poor areas of a county — do not get response from the people.
- *f.* Poorer type of lawyers, teachers, preachers, etc.
- *g.* Banking facilities are inadequate and often far distant.
- *h.* Public buildings are of poor construction.
- *i.* Telephones usually party lines and often do not have outside connections.

12. Facilities for Travel.
    - (1) Means of travel are limited.
        - *a.* Automobilies are few and of poor quality.
        - *b.* Railroads — often a branch line or none at all.
        - *c.* Highways — almost always of very poor quality unless the state aids.
        - *d.* Bus lines are few and with infrequent service, unless the region is between two towns.
        - *e.* Electric railway lines are seldom found, unless the area is between two cities or towns.
13. Community Progress.
    - (1) Such communities make very slow progress or none at all, without outside aid, because of —
        - *a.* Lack of information.
        - *b.* Lack of ideals.
        - *c.* Lack of travel.
        - *d.* Lack of initiative.
        - *e.* Lack of financial means.
        - *f.* Community organizations are greatly retarded, due to lack of education and vision.

II. WHY THE STATE SHOULD ATTEMPT TO GIVE EQUAL OPPORTUNITIES FOR EDUCATION, HEALTH, ROADS, ETC., TO PEOPLE IN THE POORER DISTRICTS.

1. Characteristics of the People in the Poor Areas.
    - (1) People in most poor areas are nearly all native white (few negroes or foreigners), while richer districts have many negroes.

(2) The purest Anglo-Saxon stock is found in the poor rural districts of the South. These people have wonderful potentialities, if given an education. It is sometimes said that "in the future they may prove the salvation of the nation."

(3) If all the people were taken away from the poor rural areas to the towns and cities, the increase in the population of the state would be greatly retarded, because families are smaller in the cities. In the country is where most of the children are being reared. The cities should therefore support the country as a breeding ground for its future citizens (larger families there). It is held by some authorities that the native stock would soon die out if only the city population were left.

2. Buying Power.

   (1) Larger buying power in their trade territory helps the cities very greatly. The buying power of a territory is increased by —

      a. Larger earnings of the people.
      b. The people not being so easily victims of grafters.
      c. Better transportation facilities.
      d. Better health of the people.

   (2) From a purely selfish motive the business men of a city should favor helping poor sections of their trade territory in education, roads, health, etc.

3. Taxation.

   (1) The raw products of poor regions are manufactured elsewhere, and tax values are lost to the poor regions. They should get their share of this tax money.

   (2) There is just as much justice in covering a wide area (a state) for taxation purposes as there is in covering a county. Tax money should be used to give all people an education, roads, health services, etc.

   (3) The government compels the individual to pay school taxes in proportion to his wealth, regardless of whether he has children or not. The same principle would compel a group of wealthy individuals (a city or rich agricultural area) to pay in proportion to their wealth to educate poorer groups' children.

(4) Farm property is about all there is to tax in a poor county. If farmers in a poor county must raise all taxes for all purposes in that county, it puts an undue burden on them. Farm property is not very productive, and at the same time is all visible for taxation. Thus farmers very frequently pay an unduly large percentage of their income in taxes, at best.

4. Influence of Poorer Regions on Other Regions.

(1) Districts adjoining the poorer districts cannot escape the bad influence of the lower standards in the poor area, and unless progress is made in the poorer regions the progress of the rich regions will be retarded. "A chain is no stronger than its weakest link," and if we are to have a unified, progressive, and powerful state, we must take care of the poorer sections.

(2) A very large percentage of the prostitutes and criminals in the towns and cities come from homes where education advantages have been meager.

(3) Poorer regions are part of the state, and if they do not progress, the progress of the *state as a whole* is necessarily held back.

(4) We do not live for ourselves alone, and what benefits other people benefits us. We are a part and parcel of every person we come in contact with from the cradle to the grave. As some poet has said:

> There is a destiny that makes men brothers;
>   None goes his way alone:
> And all that you send into the lives of others
>   Comes back into your own.

(5) Improvement money should be spent where it will do the most good — and the weakest point is most easily remedied.

5. Educational Opportunities.

(1) It is to the interest of the cities to educate the children of the poor region, for many of them will be citizens of these cities in the future. These children will later lower both the business and social standards of the city if not educated.

(2) Education, etc., may eventually make these poor areas self-sustaining. There are nearly always some successful farmers

in each poor district, and if others were educated they too would become successful, thus making the area prosperous.

(3) If the children of the poor regions are educated, they themselves will become self-supporting by one of three ways:
  a. By increased efficiency in that region.
  b. By moving out to a more productive section.
  c. By a change in occupation.

(4) The children of the poor areas are naturally of fair intelligence, and many of them will develop into successful men if educated. (Poor people are on poor areas, but many intelligent people are there also; and besides, some children will inherit traits of their ancestors.)

(5) Educating the people in the poor sections develops some leaders, thus giving the state more and better leadership.

(6) Many native geniuses are born in these regions (mechanical, artistic, etc.), but without education they are lost to the world.

(7) The state should furnish agricultural experts to study out and solve the problems of the poorer agricultural sections and help the people of these areas get on their feet.

(8) The fundamental principle of the free school system is to give all the people an education, not just the wealthy people.

(9) In court the county or state pays an attorney for a poor man unable to pay one. Why not give him social opportunities also when he cannot pay for them?

(10) By educating the people in the poorer regions their earning power is increased; hence their future tax payments will be also increased and this will help the state.

(11) Criminal tendencies are more likely to be repressed when people are educated. Development of a higher mentality curbs the animal instincts:
  a. The individual represses them in himself.
  b. Educated neighbors repress them in individuals.

(12) Education will cause people to take more interest in county agent and home demonstration work and to profit by it.

(13) Education discourages laziness, unthriftiness, and harmful surroundings.

(14) Education lowers the necessary expenditures for —
  a. Jails.
  b. Courts.
  c. Penitentiaries.
  d. Poorhouses.

(15) The people of the poor sections want the privilege of helping in the improvement of the state, in the same way that other people do. Education gives them a chance to do this.

(16) Wealth is the direct product of intelligent action (education); hence education for all the people is a good investment for the state as a whole to make.

(17) The richer people are dependent on the poorer ones as laborers; and these make better workers if educated.

(18) In a democracy where all people have equal votes, it is very important that people be educated well. The welfare of the state depends on all the people. A very large part of some states is poor. People in poor areas have votes and send representatives to the legislature, etc. Since we have so many people living in poor areas, their influence is large, and it behooves the other sections to educate them in self-protection.

(19) Good schools, roads, etc., will help break down the social barrier between people of these poor regions and those of other regions.

(20) Rich and poor people in a *county* share alike in school facilities. The same principle logically applies to poor areas in a *state* as a whole. A logical separation of the state into counties, based on economic and social relationships, has not been done by present county lines; in fact it would be very hard to do. Take the metropolitan area of a city — the city should help educate all the people in that area just as it helps educate all the people in the slum districts.

(21) People of a poor region really need more education to be good citizens than do people of rich areas, for they have harder problems to solve.

(22) The people of the poor areas show eagerness for education, where schools are provided.

(23) These regions are now being drained of population by people moving out to educate their children; the leaders go, leaving the areas without adequate leadership.

(24) Many of these citizens are soon to become residents of the cities, and if they are educated they will make more useful citizens for the cities. Hence, cities will be well repaid for the cost of educating them.

(25) If as many people went from city to farm as from farm to city, it would be more fair for each to pay for educating its own children. But since more go from farm to city, the city should help educate those in the country who are to spend their productive lives within the city limits.

(26) Unless good educational facilities are provided for them, these poor regions will get further and further behind. The poor economic position will result in poor schools, and this in poorly trained people — and so the cycle will continue. On the other hand, the rich sections will have good income to provide good schools to provide well-trained people who will increase the income further, etc.

6. Highway Facilities.

(1) In poor areas with poor roads we find —

a. Much bad liquor made.
b. Children do not attend school.
c. Wild game killed out of season.
d. Streams are dynamited to kill fish.
e. Criminals hide out.
f. Quarantines are not enforced.
g. Crops are not inspected for pests.
h. Diseased stock not properly disposed of.

All the above affect each of the adjoining counties.

(2) Building good roads through poor regions connects up the richer areas, thus helping the latter.

(3) Good roads mean tourists coming in, who will bring many new ideas and cause the region to advance.

(4) Good roads increase productive value of the lands, thus raising the tax-paying capacity of these areas.

(5) Good roads mean produce gathered will increase, thus increasing productive value.

(6) Good roads mean better mail service, and thus people are advanced.

(7) Better roads enable the people to get to town often, bringing their produce, and —

- *a.* They get inspiration and information.
- *b.* They bring products to town, which cheapens living for those in the cities.

(8) Good roads all over the state are a good advertisement for the state as a whole.

(9) Roads will make these sections more accessible and more prosperous by enabling the people to take up the type of agriculture for which they are best adapted.

(10) Good roads mean a saving in transportation expense to the people of the towns, for the products they get from the poor regions.

(11) Saves waste, for good roads enable farmers to market perishables, thus increasing the wealth of the state.

(12) Summer and winter resorts are sometimes found in these regions, and hence a good road serves a double purpose.

(13) Some of the most beautiful scenery is along roads in poor agricultural districts.

(14) Good roads permit law enforcement and prevent seats of lawlessness from continuing.

(15) Good roads and schools will open the eyes of people of the poor areas to outside opportunities and thus cause some of the marginal people to move out to other centers.

(16) Good roads bring in more R.F.D.'s and thus improve the mail service.

(17) People outside the county benefit from roads and schools and should help pay for them. Take the matter of roads — a large city is perfectly willing to help pay for roads in the county in which it is located; why not also in adjoining counties?

(18) These regions are too poor to build the necessary local roads themselves; hence it is a good investment for the state to

build them there; and the poor counties cannot build their part of cross-state highways without state aid. It is only right that these latter should be state built, anyway.

7. Health Opportunities.
   - (1) The state should control outbreaks of contagious disease in poor areas, and thereby protect other sections as well, for if the people of such a region have malaria, typhoid, etc., they will scatter it to their neighbors in adjoining counties.
   - (2) The state should control contagious animal diseases in the poor districts, and thus protect other sections also.
   - (3) With an adequate health service, children in the poor areas will be more healthy, and thus —
     - *a.* Will not spread disease into other areas.
     - *b.* Will be more efficient workers when they go to the city.
   - (4) The state should keep the people of the poor districts healthy for economic reasons also, because —
     - *a.* They will be better farmers.
     - *b.* They will pay more taxes.
     - *c.* The people will take more interest in the state's welfare.
     - *d.* There will be less economic loss due to early deaths.
   - (5) Factories do not like to locate where health conditions, schools, and roads are bad. The state wants factories to locate in the poor regions, and hence should provide the above incentives.
   - (6) Doctors and dentists are not staying in poor regions with poor roads. If the people are to have these health services, they must have good roads.
   - (7) Housing conditions are very poor, and food is inadequate. Hence the need for the health service is greater than in rich areas.
8. Other Reasons for Providing Equal Opportunities.
   - (1) To create greater loyalty to the state.
   - (2) To discourage the leadership from leaving the poor sections.
   - (3) The towns owe their growth to the raw products produced by the people in the poorer regions — hence are under moral obligations to these regions.
   - (4) Most arguments against such assistance are based on selfishness.

For humanitarian reasons we should care for those unfortunately situated.

(5) Gifts to charity are in reality an attempt partially to equalize opportunities for those disadvantageously situated.

(6) There will be less waste of natural resources.

(7) "A man cannot live for himself alone," and neither can a rich county do so.

III. REASONS WHY THE STATE SHOULD NOT ATTEMPT TO FURNISH EQUAL OPPORTUNITIES IN EDUCATION, ROADS, HEALTH, ETC., TO PEOPLE OF THE POORER SECTIONS.

1. Taxation.

(1) Since tax money is limited, it should be spent where it will do the most good, namely, on the best class of people; and these are almost always found in the richer areas. As Galpin says, the submarginal area is "the land of machines with broken handles, of people with misfortunes, the country of the lame, the halt, the blind."

(2) Schools and roads are not taxpayers, and *too much* money should not be taken from taxpayers and put into those uses. It lowers the supply for production purposes, and also lowers tax revenues for the state as a whole.

(3) People of the richer areas pay more taxes, and it is only right and just that they should have better schools, roads, etc.

(4) It would lower the standard of improvements in the better areas, as their tax-paying power is limited. It is simply a leveling process, necessarily bringing the richer sections down.

(5) It would discourage progress in the rich areas, due to a higher tax rate there.

(6) Such a programme usually calls for larger expenditures by the poor counties themselves to meet certain requirements, and many of the people of many of these areas are unable to pay higher taxes than they pay now.

2. Settlement of Poor Districts Not Needed.[1]

---

[1] In weighing these arguments, it would be well to consider the possibility that some districts have been made "poor" by adverse social action. — The Editors.

(1) Much poor land that is not now being cultivated would be settled upon, to the disadvantage of all farmers by increasing the crop surplus. Some people will farm if they can exist at it, and if the state furnishes these free advantages, too much of the marginal land will be farmed.

(2) The giving of these advantages would tend to increase the rural population of these regions; but we do not believe in permitting weak-minded people to increase in numbers, because they become burdens on society. Should not the same principle apply to people who insist on staying on these poor lands and thus become burdens on society?

(3) In these regions the population is sparse, and hence few would use such schools and roads if they were built.

(4) The population of these regions is and should be decreasing, and hence their schools and roads should not be planned for an increase in population. They are adequate for the proper size of population now.

(5) These lands will not be abandoned so long as we subsidize the farmers who operate them. The people now move down into the richer areas to get to good roads and schools; but if we provide these in the poor counties, they will remain there.

(6) These regions should be put to forests. We need the timber but not the farm products produced on these marginal lands. These lands are better suited to timber than to farming. Let the people move out and do something else, and let the lands grow up to timber.

(7) It is a good deal like society irrigating a lot more land in the West, and putting farmers on it, the government paying most of the expense, when such lands are not needed; the principle is the same.

(8) Many of the people who want and will use these better advantages now move out anyway to other regions. That is what all should be encouraged to do, because —

a. The agricultural industry would be much better off without these districts being farmed.

b. Inhabitants of these regions would probably do better for themselves elsewhere; hence it is no favor to them to encourage them to remain there.

c. Society as a whole would be better off if these people moved out and took up other occupations.

3. Effect on People and Communities.
   (1) It would be giving the inhabitants of the poor areas something for nothing, and people do not value the things they get in this way. "We get out of anything about what we put into it" — that is, people have to work for what they get before they appreciate it.
   (2) It would discourage initiative and the self-help instinct.
   (3) Many people often stop trying to help themselves when others begin to help them.
      a. Wealth easily obtained has a demoralizing effect.
      b. The more people are helped, the more they expect to be helped.
      c. This support once given, they would expect it always to continue.
   (4) People of these regions can themselves provide roads, schools, etc., which meet their actual requirements, and this —
      a. Makes them more self-reliant.
      b. Develops initiative.
   (5) There are many things that the people of these areas could do for themselves at no expense to society, but they have not the intelligence and initiative to do so; and since the ignorance of the people would prevent the expensive facilities provided by other areas from being utilized, the money furnished by other districts would thus be uneconomically used. It would be poor economics to spend much money on these districts, as the returns will be so very low.
   (6) The most inefficient class of farmers are now found on the poor submarginal lands. But farming is not a suitable occupation for the inefficient, as it requires more initiative and business ability than they have. Such persons should work in gangs where there is someone to direct them. Hence these people should not be encouraged to continue at farming. Both their

families and society as a whole will be benefited by their moving out and taking up another occupation.

(7) The law of diminishing returns works in these improvements, and the returns begin to diminish more quickly in poor areas; hence smaller amounts should be spent.

(8) Land prices would go above productive value.

(9) Poor districts would soon let these improvements go down to ruin if they were given to them free of charge. In other words, a *perpetual subsidy* of these regions would be necessary to keep the facilities in operation.

(10) This scheme tends to be socialistic.

(11) In communistic communities where all share alike regardless of amount produced, the ambition of all classes is lessened. This proposition would tend to have the same effect, being, as it is, a *communistic* arrangement for all people of the state.

(12) It sets a precedent of discrimination in favor of a certain economic group.

(13) It puts a premium on improvidence.

(14) This is a question of public policy; and if we commit ourselves to it, we are headed for a long list of other things of this kind, which would be detrimental to society.

4. Education.

   (1) Ignorance causes the people of the poor areas to revolt against the school laws and health regulations, when modern methods are attempted there; hence they do not take advantage of good schools and health facilities when they are provided for them.

      a. Returns from lands are low; hence more labor is required per hundred dollars in returns. This results in many poor families keeping their children out of school to work and not taking advantage of long school-terms when provided.

      b. Many of these people do not now take advantage of the facilities of churches, schools, etc., when these are provided free and near at hand.

      c. Not many would go to college even if the best of elementary schools were provided.

   (2) If education by means of county agents and home demonstra-

tion agents were furnished the poor counties free, they would not use it to advantage. Actual trial shows this to be true.

(3) Population is so sparse that good schools at frequent intervals are very expensive per pupil; better have only a few centralized schools.

(4) Putting schools, etc., in these areas is wasting money, as the people could do better in other areas and should not be encouraged to stay in the poor sections.

(5) A system of scholarships has been suggested to provide for the unusually bright children from each poor county, these children to be sent to schools elsewhere, rather than trying to provide good local schools in all communities.

(6) It would be cheaper to give free tuition, etc., elsewhere and let even all of those who would attend school in those poor regions go elsewhere to school than to provide an expensive school system for these poor areas and then have it only partially used.

(7) The good regions should be provided with adequate schools first, as the best class of people are there and hence greater returns are received on the investment of the school funds.

(8) Many of the people in these submarginal regions can logically be classed as feeble-minded, and it is useless to try to educate them to any extent.

(9) Inefficient people usually get on the poor lands, and hence most of these people would not take and use *high schools* to advantage — do not have the mental capacity to do so.

5. Roads.

(1) The cost of building roads through many poor mountain areas is extremely high, due to the topography.

(2) These roads and schools, if they are provided, must *always* be maintained by the state, as the poor area will never be able to do so.

(3) People in poor districts do not use roads so much; hence expensive roads not needed.

a. Do not have much produce to haul.

b. Do not have cars to ride in.

(4) Good roads encourage owning automobiles, which the people in poor farming areas are unable to support.

(5) Good roads would encourage poor people who have cars to ride around too much, thus neglecting their work.

(6) The cities do not attempt to provide good streets for their own poor slum sections that are unable to pay their share of paving expense. So why should they be expected to pay for fine roads in rural slum areas?

(7) The populous counties have no interest in local roads in sparsely settled poor sections far away, and should not be expected to pay for them. To help build state roads through these faraway areas is enough to ask the populous counties to do.

6. Health.

(1) If an educational health unit were put in every county, the people in the poor areas would not listen to them — just as they now take little interest in county agent and home demonstration work when these are provided.

(2) Thinly settled regions do not need as many health restrictions, regulations, etc., as do cities and thickly populated areas.

(3) Sparse population and the poverty of people should prevent many hospitals and doctors from being located in these regions. It is an uneconomical use of public money for the state to put them there, where they will be little used.

7. Unfair to Other Sections.

(1) This scheme simply means taking from some people by force and giving it to others who are less thrifty. The people of the richer sections think such a plan is unfair to them, and it is. Thus sectional antagonisms are engendered.

(2) It necessitates giving more aid to some sections than to others, which is discrimination.

(3) These are marginal farmers, and it is not fair to subsidize them at the expense of really productive farmers. Such a subsidy hurts the farmers of other sections in two ways.

a. By taking their tax money away.

b. By causing more farm products to be purchased in competition with theirs.

8. Other Arguments against Providing Equal Opportunities for Poor Areas.
    (1) Democracy does not imply full equality in all respects to all citizens regardless of intellect and industry.
    (2) To accomplish its full purpose, such a programme would require too great interference on the part of the state in local affairs.
    (3) If this idea is carried to its logical conclusion, it will result not only in state aid, but also in *national* assistance, to social institutions. It will also result in assistance not only to schools, roads, and health but also to a vast number of other social welfare agencies. Thus a large and very undesirable bureaucracy would be built up at Washington.
    (4) We should be warned by the unhappy experiences of the British government in its attempts at poor relief, and by the thoroughly undesirable results which have been brought about by these well-meant but unsound measures.

2. FACTS AND FACTORS WITH REGARD TO THE FARMERS' STANDARDS OF LIVING[1]

By E. L. Kirkpatrick
Associate Economic Analyst, Bureau of Agricultural Economics,
United States Department of Agriculture

It was to picture more clearly the amounts and the values of the different kinds of goods used by the farm family that the Division of Farm Population and Rural Life, Bureau of Agricultural Economics, started the study of the farmer's standard of living about four years ago. Results of the first study of four hundred farm families in Livingston County, New York, were sufficiently worth while to warrant a continuation of the work in other states. Aside from the Livingston County study, eleven other studies, made in coöperation with state colleges or universities, have been completed. Some of the combined results from these eleven studies are given in this paper.

---

[1] Reprinted by permission from *Proceedings of the National Conference on Social Work*, 1926, pages 388–395.

These results were obtained from selected localities of New Hampshire, Vermont, Massachusetts, Connecticut, Kentucky, South Carolina, Alabama, Missouri, Kansas, Iowa, and Ohio. One hundred to five hundred farm homes constituted a unit of study. The field work in each case was done by advanced students of sociology, economics, or home economics, or by county home demonstration agents selected by the college or university coöperating.

Practically all schedules were filled between July 1, 1923, and December 31, 1924, with estimates of amounts and values or costs of goods used for the year just preceding the date of the visit by the field worker in each instance. Since price levels changed very little between the two dates, the results are combined as representing the average value of goods used during one year by 2,886 farm families, including 1,950 owners, 867 tenants, and 69 hired men.

Composition of households and families

The average sizes of households and families are 4.8 persons, and 4.4 persons for all the homes studied. "Household" means all the persons sheltered in one dwelling and fed, usually, at a common table. The family includes the parents and the sons and daughters who are at home or who, while away at school or elsewhere, are supported from the family purse. The household may include, in addition to the family, relatives, hired help, boarders, and others. Relatives and others are taken into account in the use of all goods when supported from a common income. When not supported from a common income, they are excluded under all except food and rent.

Value of family living furnished by the farm

The average value of family living furnished by the farm amounts to $684 per family. Goods furnished by the farm include foods, $441 per family; use of the farmhouse (10 per cent of the reported value of the house), $200 per family; and fuel, $43 per family. Food constitutes the largest proportion of the value of all goods furnished, the percentages being 64.5 for food, 29.2 for rent, and 6.3 for fuel.

The average values and the distribution of the average value among the different groups of goods furnished by the farm varies widely among the separate states. These variations may be due in part to different climatic conditions, different types of farming, and different prices — of foods and fuel, especially. Severe winters call for more fuel in Massachusetts than in Alabama. Supplies of wood available from the farm vary in the different states. Similarly, housing demands vary with the severity of the climate and with the prevailing housing standards of the farming communities. The type of farming influences the value of food furnished, consequently the proportion that the value of these foods is of the total value of all goods furnished. Finally, higher prices enhance the value of food or fuel in certain states. Size of family has some bearing in this connection.

Average value of family living furnished and purchased

The value of family living furnished by the farm constitutes from one-third to one-half of the total value of family living, the average being 42.8 per cent for all families here represented. Thus, approximately 57 per cent of the farm family living, $914 worth of goods, is provided by direct purchase.

Purchased goods and services used include foods; clothing; furnishings, such as furniture, musical instruments, bedding, etc.; operation goods, such as fuel and use of the automobile for family living purposes; health facilities; advancement goods and facilities, such as schooling and recreation; personal goods, such as barber's fees; candy and tobacco; insurance goods; and goods not readily classified.

The average value of all family living is made up of the values of goods furnished and purchased. This amounts to $1,598 per family (see the table on page 412).

Distribution of the average value of all family living among the principal groups of goods

The distribution of the average value of all goods used among the principal groups of goods is shown in the table on page 412. Food amounting to $659 per family comprises 41.2 per cent of the total value of all goods used. The costs for clothing, amounting to $235 per family, are 14.7 per cent of the value of all goods used.

The average value of rent, $200 per family, comprises 12.5 per cent of the value of all goods used. Size of house, extent of modern equipment or modern improvements, and conditions or state of repair were considered in arriving at the arbitrary values from which the rental figures were taken. For all homes an average of 6.8 rooms per family or household, excluding bathrooms, pantry, halls, and closets, was reported. The average number of bedrooms furnished for use for those families reporting amounted to 3.3 rooms per household, or approximately 0.7 of a sleeping room per person. Slightly more than one-twentieth, 5.7 per cent, of all the homes of the 2,886 families reporting were completely modern, that is, fitted with central heating and central lighting systems, running water, kitchen sink, bathroom (equipped with stationary tub and bowl), indoor toilet, and sewage disposal. About one-fifth, 20.8 per cent, of the homes were partially modern, that is, fitted with a part of the improvements named above. Almost three-fourths, 73.5 per cent, of the homes lacked all modern improvements.

The average value of furniture and household furnishings purchased during the year amounts to $40 per family. This expenditure comprises 2.5 per cent of the average value of all goods used. The average value of the operation goods, amounting to $213, comprises 13.3 per cent of the value of all goods used. Expenditures for the maintenance of health averaged $61 per family. This amount is 3.8 per cent of the value of all goods used. The average value of goods for advancement purposes amounts to $105 per family and constitutes 6.6 per cent of the value of all family living. The average value of goods for personal uses, amounting to $41 per family, comprises 2.6 per cent of the value of all family living. The average expenditure for premiums on life and health insurance, life insurance primarily, $41 per family, is the same as the average expenditure for personal goods. Only a small percentage of the schedules carried expenditure for goods not readily classified. The average amount of money spent per family for unclassified goods amounted to about $3 per family, or 0.2 per cent of the value of all goods used.

It was found that the proportion of the total value of goods devoted to food decreases from 54.4 per cent to 30.7 per cent as the average total value rises from $486 to $3,779 per family. On the other hand, the proportion for clothing increases quite regularly, from 11.6 per cent to 16.4 per cent, with the increased value of all goods used. Similarly, the pro-

AVERAGE VALUE OF GOODS USED AND DISTRIBUTION OF THIS VALUE FOR THE DIFFERENT GROUPS OF GOODS CLASSIFIED ACCORDING TO USE, INCLUDING MATERIALS FURNISHED BY THE FARM AND PURCHASED DURING ONE YEAR. FARM HOMES OF SELECTED LOCALITIES OF THE UNITED STATES.

Groups of articles	All states (2,886 families)	
	Value per year	Proportion of total (percentage)
Food, including groceries	$659	41.2
Clothing	235	14.7
Rent (10 per cent of reported value of house)	200	12.5
Furniture and furnishings	40	2.5
Operation goods	213	13.3
Maintenance of health	61	3.8
Advancement goods	105	6.6
Personal goods	41	2.6
Insurance: life and health	41	2.6
Unclassified	3	0.2
Total	$1,598	100.0

portion devoted to advancement goods increases from 1.9 per cent to 13.4 per cent. The proportions for the maintenance of health and for insurance increase somewhat irregularly. The proportions for rent, furniture and furnishings, personal goods, and unclassified goods remain about the same or vary without regard to the rise in the average value of all goods used.

Number of children per family

The average values of goods were determined for several groups of families, 1,662 in number, which could be classified readily on the basis of the number of children supported per family during the year of study. The value of all family living increases somewhat irregularly from approximately $1,100 for families with no children to over $1,950 for families with six or more children. Were this increase distributed regularly, it would mean an extra cost of slightly more than $140 per child, regardless of age or sex.

Changes in the distribution of the value of all family living among the different groups of goods for the families of different numbers of children were noted. The proportion that the value of food is of the value of all goods used increases from 39.6 per cent for families with no children to 47.5 per cent for families with six or more children. Similarly, the proportion that the cost of clothing is of the value of all goods used increases from 11.1 per cent to 17.9 per cent. The proportion of the total value of all goods devoted to rent decreases quite regularly with an increase in the number of children. The proportions of the total value of all goods devoted to other purposes remain about the same or vary with little or no regard to the number of children per family. The percentages of the value of all goods and of food and operation goods furnished by the farm and purchased remain almost constant or vary without regard to an increase in the number of children per family.

Factors versus *facts*

The foregoing discussion constitutes a brief summary of the most pertinent facts available on the value of goods used by the representative American farm family. These facts picture quite definitely the scale or level of living of this representative farm family in terms of cost or value of the economic goods used during one year and the distribution of this value among the principal groups of these goods.

The data presented call for consideration of the many factors related to the scale or level of living, only one of which has been touched upon, the number of children supported per family. They are suggestive of further analysis of the relation of enlargement of the farm business, of the farm family's income, and of the use of time to farm living. They are indicative of a need for serious study of the ways in which schooling of the farm operator, the home-maker, and the children modifies the standard of living. They stress the need for information with regard to the influences of social institutions, the school, the church, and the village, and of group activities on the desires and demands of the different members of the family. They call for thorough study of the effects of racial stocks, traditions, customs, and habits on the objective standards of living as well as on the prevailing level of living. They merit a consideration of the ways in which the different members of the farm family react psychologically to similar and to different situations.

For example, averages of costs, values, or quantities of goods used during one year do not give satisfactory pictures of the standard of living of the two farm families described by a field worker as follows in notes jotted down at the close of his day's work in record-taking on the cost of farm family living.

> Two families visited today were especially interesting. They were on about the same economic level and had the same number of children. Both inherited their farms, married sisters, and started out on adjoining farms. The inside of one home was more like a pigpen than a dwelling place. The other was a splendid, well-kept home. There was no difference in the size of the houses. The children of one home were in high school, interested in music, talked of books they had read, had a library of one hundred books, and had a wholesome outlook on life. The other home had twenty books and no musical instruments, the children were dirty, cursed fluently, and could talk only of hunting. The oldest daughter was just back from the city, where she said she had been a housekeeper. She had learned quite a bit of cute slang. Her father was a chronic grouch, seemingly disgusted with himself, and the mother seemingly had given up all ambition, if she had ever had any. The father and mother of the other family were interested in churches, roads, and schools.

It is clearly evident that no economic level, no values of goods available for use during one year or many years, will give any indication of the difference in the standard of living in these two families, which difference is due seemingly to inherent differences in the two husbands. Is it enough, then, to let the economic level of living suffice? Must not the same economic consideration be supplemented by sociological, psychological, and possibly psychiatrical studies and interpretations for the basic factors which set the standard of living at its specific level?

Let us consider hastily a few more families as described by a field worker:

> I walked a mile and a half down the hill to a little red house on one side of the road and two old patched-up barns on the other. One of the barns was over a ditch through which water flowed during a rain. Below this barn in the ditch by the road was a mudhole fed by a spring from the hillside. In the mudhole were eight ducks and three children, the oldest about seven years of age. The mudhole was about thirty feet from the house, and in full view from the front door.
>
> On the front porch was a pair of boots fresh from use in six inches of manure

at the barn. The porch was literally covered with mud and manure. The yard was strewn with everything. The children all ran for the house when they sighted me. The youngest, failing to make the porch with the others, began to cry. This brought the mother to the door. She was a slim woman of about thirty summers. She seemed a bit frightened at first, but soon we were discussing the weather and the cozy home site in the side of the hill. She brought two chairs and asked me to sit. The small child, fresh from the mudhole, crawled up into his mother's lap with all the mud and dirt that could cling to him. The schedule was finished at half past eleven and I was invited to stay for dinner. This was an opportunity I had wanted, but at the moment I failed to see how I could make myself eat.

Presently Mr. —— came in, a red-haired, broad-shouldered, husky farmer. We fed the horses and went in to dinner. There was no tablecloth on the table, and the dishes were well-worn and abused. But the table was loaded with food: chicken in two dishes, ham, beef, potatoes, cabbage, lettuce, and watermelon. Near by was a cupboard nearly loaded with pies. There were two other guests, but the food was sufficient for half a dozen more. It was well cooked, but messy. The children had a bench at the end of the table. The father looked them over and decided that Theodore should "go wash under his nose." Theodore, after some argument, obeyed, in form only. I ate a square meal and topped it off with as good a piece of raspberry pie as I ever ate. No one could have been more cordially received and entertained than I was.

This family spent, in addition to table expenses and household operating expenses during the year, $50 for furnishings and equipment, $35 for a radio, $6 for wall paper, and $15 for reading materials, including a subscription to the *Literary Digest*. They had fifty books in the home, including two religious and six agricultural. Both the husband and wife were high-school graduates, and the husband expects to teach this fall. He has taught five years in the rural schools. The teacher in the home school the past year "didn't have any sense" and "couldn't teach a pig to drink slop." If these folk bought a radio or a piano every year and taught school a lifetime their standard of living would never be raised a mite higher.

With this family it appears that the expenditure of money for goods commonly regarded as indicative of advancement is not accompanied by the enjoyment of psychical or spiritual values which this expenditure of money should make available.

The neat farmstead, although located in an out-of-the-way spot, occupied a beautiful site at the foot of the hill. A set of well-painted and well-kept buildings graced the setting which nature had provided. The lawn was planted as attractively as if a landscape architect had planned it. Every building and post was painted, and all blended into a color scheme. The house was not so large, but it was substantially built. Electric lights were shining in the house, the barn, and the henhouse.

I went to the front door, knocked, and asked to stay for the night. The mother, a large, portly woman, was not sure, but would ask her husband. I agreed to take chances with the husband and started for the barn. Soon the husband was adjusting himself to the newcomer, who discussed the merits of the milking machine. Two little girls, eight and six, dressed in rompers, helped with cleaning the pails, which task, along with the operation of the milking machine, was in charge of an intelligent-appearing brother of about fourteen. Chores over, we went in to supper, a good meal — ham, eggs, potatoes, hot rolls, apple jelly, etc. — served on a clean white tablecloth under a group of electric lights. The meal over, we filled out our schedule, after which we visited until half past eleven. All remained awake, and we played games, told stories, and talked about the vital problem they were grappling with, that of schools. They live so far from schools that the little ones can't go alone, and the boy is going to high school next year. The boy is interested in bees and wants to come home at nights from high school to help with the chores. The girls were as bright as could be — able to locate their home and others for five miles down the road on the map which I had with me. They told many interesting stories and recited short sayings. It was an ideal family. I never saw a place where animals were so gentle. The horses came to the house for sugar. The turkeys flew on my arm when I held it out. The boy raked the bees off the hive with his hand and held them in his hat. The little girl could pick up any duck in the yard.

The expenditures for goods ordinarily classed under advancement were seventh lowest of any of the eight homes visited yesterday. The family reported less time spent at reading than did any other of these eight families. Both parents had only grammar-school education. But there is no question about their standard of living or standard of culture. It was reflected in unmistakable ways other than expenditures, painted and well-kept buildings, modern equipment, and a good table. It seems to be a part of the folk, a well-rooted, never failing source of human culture.

Is it a question of the economic level of living — of the value, or the amount, even, of goods used by this family? Is it not a question of the ways in which these goods are used and the satisfactions they afford by virtue of higher inherent capacities or of superior psychological reactions of the family in question to its own peculiar environment?

The preceding sketches indicate clearly some of the factors involved in the situations with regard to a few of the farm families represented by the facts which have been given. They are suggestive of some of the many ways in which separate families and individuals react psychologically to both similar and different situations. They constitute a virgin field for properly trained investigators and case workers. They challenge the attention and merit the consideration of all thinking social scientists and social workers.

Relation of facts and factors to the rural social problem

Just what bearing, if any, have the foregoing facts and factors on the rural social problem? What is the rural social problem? What is its scope? Should it be conceived of in the singular or the plural? Are there not myriads of rural social problems, as many as there are rural communities, yes, as many as there are rural families? For convenience may we define the one in terms of all rural social problems, the release of human social forces for unhampered free and progressive action? Note that the problems of the family, even of the individual, are covered in our definition.

We have next to suggest ways of connecting the facts and factors with the problem. Two ways are suggested. First, there should be proper interpretation of the facts presented, as well as of all similar facts available, with a view to awakening farm families to their particular situation. It may be, or it may not be, time to suggest that farm families have larger incomes. It is time that the farm family become interested in a study of what the present income actually is, and what satisfactions the present income actually will and should provide. It is time that the farm family study its family living as closely as it studies the feeding and care of farm live stock. Second, a thoroughgoing and unbiased study is needed of a number of selected farm families by the economist, the sociologist, the educator, the psychologist, the psychiatrist, and the physician in a coördinated attempt to determine the factors contributing most of the material and the spiritual well-being of these families. Through this study the agencies involved should, first, ascertain the degree to which the level of living keeps pace with the standard of living of these families; second, ascertain how and why some farm families actually get satisfaction and joy from farm life and rural community life while others denounce and apparently despise it; third, make available to the workers attempting to solve rural social problems concrete examples of families who have made good at farming, judged on the basis of the contribution that they have made to their local community, despite seemingly adverse circumstances, with the reasons, in so far as they can be ascertained, why these families held tenaciously on when other families quit or tried to quit.

Purposely the details of this proposed study are omitted. Suffice it to say that the study should be deep rather than broad in an attempt to get at the most pertinent facts on the various steps to achievement, as tenure, economic status, education, and rational family living. It must cover the nativity and the genealogy of the families visited, the occupations and the attainments of the families' ancestors, and the attitudes of the family visited toward its occupation, its immediate surroundings, its neighbors, its local institutions or agencies, and its broader state and national interest.

The main objective in the foregoing suggestion is the awakening of the rural community and the farm family to their rational needs. When this is done we may rest assured that rural leaders and farmers will evolve plans and programmes by means of which resident families may enrich and build up the social life of the rural and semi-rural community.

LVI. IMPROVING RURAL STANDARDS

1. LIVING STANDARDS AND FARM INCOMES[1]

By Henry C. Taylor
Formerly Chief of the Bureau of Agricultural Economics, United States Department of Agriculture

It is my purpose to show that the development of ways and means of improving the standard of living in farm homes and in rural communities is an essential part of any programme which looks to securing for farmers a fair share in the national income, which in the long run is essential to an efficient agriculture as the basis of a permanent national life.

"Better farming, better business, and better living" is the slogan used by Sir Horace Plunket in the campaign for the improvement of agricultural conditions in Ireland toward the close of the last century. According to Plunket a well-rounded programme for agriculture involved all three of the proposals covered in this slogan. Better farming or greater efficiency in production without better business in buying and selling may reduce the farmers' profits, and better farming and better business in buying and selling may reduce the farmers' profits, and better farming and better business without better living as a consequence, means failure to realize the benefits resulting from the effort.

In the corn belt better farming is well understood. Efficiency in the production of corn and live stock has been greatly improved, but the business side and the life side of the programme have not been so well taken care of. We need to turn this slogan around and give new emphasis to better living. Better living is the end in view in better farming and better business. There are those who look upon the farm as the granary of the city. They want cheap food and raw materials and too rarely think of the welfare of the farmer. The farmer has no objection to cheap food and raw material if he is able to exchange his products for as many of the good things of life as the rank and file of city consumers enjoy.

---

[1] Reprinted by permission from *Farm income and farm life*, Dwight Sanderson, editor, University of Chicago Press, 1927, pages 68–75.

With the founding of the agricultural colleges the work for better farming began. No one seriously objects to better farming, but ten or fifteen years ago it became clear to agricultural leaders that better farming alone, the growing of two blades of grass where one grew before, failed to benefit the farmer unless the two blades could be marketed for something more than the one. In fact the feeling expressed in various forms implied that while better farming benefited city consumers by providing an abundant supply of food and raw material at low prices, these low prices left the farmers without profits.

This led to the movement for better marketing. Secretary of Agriculture Houston spoke of marketing as "the other half of agriculture" and started the Bureau of Markets in 1913, which is now an integral part of the Bureau of Agricultural Economics. Some of the leading colleges of agriculture started research work in marketing, and were giving courses and extension lectures on the ways and means of improving our marketing system. Real progress was made when in 1925 Congress passed the Purnell Act, which for the first time provides specifically that Federal funds granted to the experiment stations may be used for the study of economic and social problems relating to agriculture. Thus the work on "better business" is well under way. Study of the subject of better living is not as far advanced, but funds are now available for making a beginning.

The objective of better farming and better farm business is better living for farmers and their families as well as a supply of food and raw materials for the nation. Unfortunately better living has not always followed better farming and better business. There are two theories regarding the way to improve the standard of living for farmers. The one is, give farmers better incomes and they will get the better living; the other theory is, let farmers as a class demand a better living and refuse to farm without it, and the reduction of competition will reduce costs, improve prices, and provide the means of securing the better living.

Whether better income will be built into better living standards depends upon the way the income is used. Farmers have been most unmerciful competitors of each other. When they get a little increase in income it is too likely to go immediately into increased demand for land, labor, and equipment for the purpose of expanding production, which tends to decrease prices. There is no reason to believe that in the long run farmers will benefit any more from better business methods, from orderly production and better marketing than from more efficient methods of production unless they learn the other great lesson, namely, that *in the long run any class of producers gets only what it consumes.*

If farmers as a class would not farm or encourage their sons to farm unless they can secure prices which will enable them to have as many of the comforts and conveniences of life as their city cousins, then the supply of farm products would be small enough to command prices which would provide the desired standard of living, and yet, with modern efficient methods in production and marketing, prices of farm products need not be excessive in order to attain this end.

The thrift which was necessary in pioneer days is excessive under present conditions of production. This same degree of thrift induced even today when the farmer is operating under a heavy debt, has done much to hold down living standards for farmers. Add to this the effects of periodical depressions, such as that of the middle nineties and the one we are still struggling through, and you have the conditions which make for peasantry.

A higher standard of living being the goal, how can it be attained? Obviously not without the funds. Better farming, better business, and a square deal for agriculture in the distribution of the national income are the foundations on which better living standards can be built. But unless the increased profits from these sources are used at once in the building of higher living standards they will be diffused into higher land values and lower prices for farm products and cease to be available for better living.

In many parts of the corn belt real progress has been made in building higher living standards. The farm bureau has been a force in bringing this to pass. Making out a family budget has come to be looked upon with favor. This laying out of the needs of the family for food, clothing, fuel, literature, and education brings the real objective of everyday work into the foreground. In some states the idea of setting up goals has become common. True, setting up goals is not a new idea for farmers. Too long the acquiring of another forty here and eighty there has been the goal, whether the land was needed or not. But the goals I refer to now have to do with the building of a higher standard of living. After the year's budget has been made up, including all the things for which funds will probably be available, there always remain many comforts which the family will have to do without for the present. These things should not be forgotten but set up as goals. Some of the goals which have been set up on many farms are heating and water systems or a lighting system, though in some instances the goals are less ambitious. Many a good wife looks ahead longingly to the time when she can have a first-class cookstove or an oil stove for summer use. Others look ahead to having better kitchen utensils. This setting up of goals is an effective means of building a higher standard of living.

The automobile is rarely the goal on corn belt farms today. This is a part of the established standard. On various occasions I have asked whether the automobile was not an unwarranted luxury for a farmer in these hard times. The universal reply has been, "No, the automobile is a necessity for the farmer." When farmers generally insist on those elements of a modern standard of living which electricity can bring to a farm and will not farm without them, just as today they insist on owning an automobile and will not farm without it, the prices of farm products will tend to be sufficient to support that standard. The standard of living is the basis of competition among farmers. The more that farmers will do without, above mere subsistence, in order to compete for land and compete in the market with their products, the more cruel and grueling this competition becomes, and in the long run the lower will be the returns to farmers for their efforts.

Shorter hours of strenuous labor on the farm is a goal to be striven for. The use of more time in producing things for the consumption of the family and in providing pleasant surroundings in which to live is a means of adding to the standard of living without additional cash income. Moreover, this withdrawal of labor from the production of cash products would tend to reduce the intensity of competition among farmers and improve the market prices of the products sold.

The ways and means of improving the standard of living of farmers is a subject to which farmers may well give full attention. In the long run an effective programme along this line will do more to increase the farmers' share of the national income than anything else. I wish to emphasize again that unless each gain made in farm income through better farming and better business is used in building the higher standard of living on the farm and in the rural community, these gains will be diffused into higher land values and lower prices and cease to be available for the use of farmers for living purposes.

Let us make better living on the farm the basic reason for better farming and better business. This is essential not only to the welfare of the farmer, but also to the national welfare. For if the crop of surplus population which is sent to the cities does not retain its quality, agriculture and the agricultural population will cease to be the firm foundation of a sound national life.

Building better living standards is not an immediate remedy for the farmers' present ills. Only in so far as the demand for the higher standard of living becomes effective by reducing competition can it become an effective remedy. This means that some farmers should change to other occupations; yet it does not follow that every farmer could improve his income by seeking city employment. The movement from country to city is going on. The agricultural population is shrinking, but the process is slow. In 1922, two million men, women, and children left farms for cities, towns and villages. In 1924, two million seventy-five thousand made this move. But the back movement is large and increasing. The back movement was 880,000 in 1922, and 1,396,000 in 1924.[1] A large proportion of those who attempt to get out of agriculture into other occupations are unable to find remunerative occupations in the city. This is partly due to the fact that a man may be highly skilled in farming and be without skill in other occupations. On the other hand many farmers are skilled in city industries, but the labor organizations do nothing to help them secure positions.

Through the movement of population from one occupation to another we cannot hope to find an early relief from the unsatisfactory relations between the prices of farm products and of city products. But while the movement will be slow in making itself felt in price ratios, in the long run it will bring results. Many good farmers feel the strain of the present depression but realize that they cannot possibly improve their situation by moving to the city. They are, however, encouraging their sons and daughters to secure an education and seek another occupation. There are more farm boys looking toward other occupations now than ever before. Thus while the process of occupational adjustment is slow, it is in action.

---

[1] This "back movement" appears to be largely "suburban" rather than purely "agricultural." — The Editors.

The danger lies in the withdrawal from the farm of the best elements of the population to the ultimate detriment of agriculture and the nation. The whole subject of population movement should be studied from the standpoint of ways and means of providing for an adequate flow to keep a right balance between farm and city population and at the same time maintain the quality of the rural population.

Many of the elements of a higher standard of living must come through community effort and public expenditures. Better schools and better hospitals cost money. Better roads cost money. These must be paid for out of the taxes. High taxes are objectionable when money is scarce. They are particularly hard to pay just now. But before making too vigorous an attack on the local taxes, call to mind that better schools, better hospitals, and better roads are a part of the farmers' standard of living. The less he demands, the less he will get in the long run. Of course all these expenditures must be paid for out of the income from the farms, but the prices of farm products are determined in the long run by what the farmers as a class insist on having if they continue to farm. Furthermore, a good rural school develops a versatile rural population which is better able to adjust itself through a flow to the city when prices are going against the farmers.

Economy in public expenditure is correct. Making each dollar of the tax money yield a maximum is true economy. Spending too little is parsimony. Parsimony reduces the possibilities of life and always has a blighting effect.

A programme for the building and maintaining of higher living standards on farms is not a simple one. First, the educational work which will show farmers the relation of living standard to incomes will require considerable time. Second, the development of concerted action in insisting on high standards is more difficult in the country than in the city. Third, the successful carrying out of this programme involves rapid shifts of population out of agriculture into other industries when farm incomes will not maintain the standards. Fourth, the development of this programme requires a national statesmanship which will develop institutions which will stabilize the purchasing power of the dollar as one means of avoiding agricultural depressions which demoralize living standards, develop tariff policies that do not discriminate against agriculture, and develop institutions for overcoming in a measure at least the demoralizing effects of variation in crop yields upon farm income and the well-being of the farmers.

The educational phase of this programme is under way. Let us hope that the other phases may find a new impulse through new leadership.

2. EFFECTS OF DIFFERENCES IN ECONOMIC STATUS[1]

By Carl C. Taylor
Dean of the Graduate School, North Carolina State College

Any wide difference in economic status among the families of a farm community is a handicap to the development of a high standard of living. This is true for two reasons. First, because any wide difference in economic status tends to establish a recognized inferior group and recognized superior group. Second, the standard of living being a cultural complex, any wide breach in social status tends to slow up the assimilation of culture by the lowest status groups. The most extreme examples of the presence of these two influences are in the tenant-cropper sections of the South, in the hired-man sections, such as the beet, truck, and berry areas, and in those sections that are heavily populated with negro or foreign groups. In all of these sections, not only are the standards of living of those of inferior economic status low, but the rural standard of living of the whole area is generally low.

In one community of a southern state the writer visited fifty-three farm homes, one of which was an old plantation manor, another the residence of an owner-operator, and the remaining fifty-one the homes of negroes and white tenants. There was no lack of physical land assets in the community, but the standard of living of fifty-one fifty-thirds of the families of the community was a slum standard.

---

[1] Reprinted by permission from *Farm income and farm life*, Dwight Sanderson, editor, University of Chicago Press, 1927, pages 146–152.

In the southeastern Missouri section, the writer and his colleagues made a study of 422 farm families. Of these only forty-one families were owners. We discovered not only a very wide discrepancy between the standard of living of the great number of hired-men families of the community and the standard of living of those who owned the farms upon which the hired men worked, but found also that a wide difference between the standards of the hired men and that of resident owner-operators existed. In this community were five rural churches, three of them abandoned and the other two in a very bad state of disrepair. This is an exceedingly wealthy community, but the wealth is reflected only on the standard of living of those who own the land and who, for the most part, live in the town of Sikeston.

The wide difference between the standards of living of negroes and foreigners and the native whites of practically all rural communities where these classes live side by side is too well known to require the presentation of an example.

Examples of differences in economic status

The writer has attempted to make a comparison between the cultural status of a wide area in which the difference between the economic status of the classes of rural population is very marked, and the nation as a whole. In practically the whole cotton and tobacco producing areas of the South there exists a very great difference between the economic status of various farm classes. In the nine cotton and tobacco states, Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia, there is circulation of only one newspaper for every 12.7 persons. The rate for the United States is one paper for 3.6 persons. Only 2.7 per cent of the rural homes of these nine states have gas and electricity. The rate for the rural sections of the nation is 7 per cent. The value of the farm buildings, which of course includes the house, for nine states is $853. For the United States as a whole it is $1,781. The rate of illiteracy for native whites over ten years of age for these nine states is 5.9 per cent. For the United States it is 2 per cent. If foreign born and negroes are included, it is 13.2 per cent for these nine states and 6 per cent for the United States.

In the southeast Missouri community referred to above, there is probably as sharp a difference between the standards of living of the various farm tenure classes as can be found in the United States, except in the tenant-cropper section of the South. In a community of 422 farm families only forty-one families are owner-operators. The remainder are hired men, croppers, and tenants. This is a rich, black-land farming area. Some of the farm owners are ranked as millionaires. The vast majority of the tillers of the soil are living in squalor. About 20 per cent of the tenants, croppers, and hired men live in one- or two-room houses. Not one of their homes has running water, gas, electricity, or heating system. Over 5 per cent of the hired men's daughters marry as early as fourteen years of age. About 10 per cent of these lower tenure classes are illiterate.

The whole community standard of living is low because of the very uneven distribution of wealth. The schools of the landlords who live in town are splendid. Those in the rural areas are minimum. The churches of the landlords in town are not only good but magnificent. Those of the country are decadent. Only 46 per cent of the rural dwellers ever attend church, according to their own statements, and only 25 per cent of them are church members. Over 28 per cent of the hired-men families never visit with anyone, not even other families of their own status, much less with those of higher economic status. This whole rural area constitutes a rural slum, not because it is not a prosperous agricultural area, but because there are present in it a maximum economic status group and a minimum economic status group.

Cultural goods and services are sacrificed when economic status is low

The normal distribution of expenditures for the average rural family [1] with an income of $1,640 is: food, 38.2 per cent; clothing, 15.6 per cent; housing, 18.7 per cent; education, 14.5 per cent; recreation, 6.0 per cent;

---

[1] Data compiled from studies made in coöperation with the division of Population and Rural Life studies of the Bureau of Agricultural Economics, United States Department of Agriculture, in the states of Kentucky, Tennessee, Texas, New York, Alabama, and Iowa. In the studies were included two thousand and thirty-two farm families.

religion, 3.5 per cent. That is, 72.5 per cent is expended for food, clothing, and shelter, and the remaining 27.5 for health and cultural goods and services. When the income falls as low as $1,000 per year, 92.8 per cent of all expenditures go for food, clothing, and shelter. This leaves but 7.2 per cent of $1,000, or $72 per year, to be expended for health and cultural goods and services. The amount expended for cultural items when the income is $1,640 is $451 per year. Thus it is the cultural goods and services which are and must be sacrificed when income is low.

If there is a sharp difference between the economic status of families within a community, there will soon be a well recognized difference between social status, with the result of different handicaps in all community activity.

A wide diffusion of wealth and income makes for a wide diffusion of cultural standards and attainments

In communities where there are wide differences between the economic status of different families of the community, one of two things generally results. Those who are most prosperous either move into the towns and participate in the higher standard of living that exists there, or they become landlords and exploit the lower income groups who till the soil.

There is always present in rural economy a competition between land values, town standards of living, and rural standards of living, for the economic gains of agriculture. Only that portion of the economic progress of agriculture goes into improving the rural standard of living which finds depository in the better homes, schools, churches, etc., which are built and supported in the open country or in small towns which serve the open-country folk. That portion which finds depository in recapitalized land values accrues only to the ones who hold title to the land, and they, whether they become absentee landlords or remain in the country as large holders, reap the rewards of increased agricultural efficiency and so monopolize the social gains therefrom. That portion which is distributed through the channels of trade and commerce to middlemen and refiners accrues to the standard of living of the cities, where these middlemen and manufacturers live. Only that which is returned to the families who till the soil has any surety of enhancing the rural standard of living.

The rural standard of living is a community standard, and a goodly proportion of the community must participate in it. There is no worthy rural civilization in those areas where great masses of the people are living on low income. In such areas as have been cited in this article — in the tenant-cropper areas of the South and the hired-man area of southeastern Missouri — the only semblance of a modern civilization that exists is in the country towns. The rural homes are shacks, 42,000 of them with one and two rooms in one southern state, the churches fall into decay, and the schools are the minimum required by law. If the higher income groups still reside in the rural areas, the social distance between them and the lower income groups is so great that the processes of progressive socialization and culturization do not work. The families with little wealth and low incomes are not only handicapped in capacity to purchase that portion of their standard of living which can be bought in the market place, but they are handicapped in their capacity to participate in a wholesome and whole-hearted community life.

Culture is a group attainment, and the standard of living is a cultural composite of goods, services, habits, and attitudes. Something approaching economic and social equality between families of the rural community is, therefore, essential to the group task of raising the rural standard of living.

Furthermore, something approaching an equal status between farmers and other enterprisers is essential to developing a worthy and stable American civilization. A superior economic status on the part of farmers has always developed a landed aristocracy, usually carrying with it a large rural peasantry. An inferior economic status, on the other hand, will develop either the community conflicts and handicaps depicted in this article, or will cause the chief rural property holders to move to the towns and cities and thus accelerate our tendency to center all the social gains of modern civilization in urban centers.

3. SOCIAL ASPECTS OF THE COÖPERATIVE MOVEMENT[1]

By E. G. Nourse
Institute of Economics, Washington, D. C.

It has frequently been remarked that the coöperative movement in the United States, particularly during recent years, has been characterized by a very strong emphasis on purely economic considerations or, indeed, a "hard-boiled" business attitude in which aggressive methods of competition, even to the verge of exploitation, have been followed. Whatever the degree of copartnership evolved within the group, the attitude toward outsiders — "the public" — has in many cases been as truculently self-seeking as that of any incorporated big business.

This attitude is much in contrast to the social reorganization ideals of the pioneers in the field of coöperation and such godparents as Robert Owen or Fourier. It is probably true in the main that Utopian or social reform ideas pertain more naturally to the consumer or industrial laborer phases of the coöperative movement than to coöperation among farmers. At the same time, however, the more thoughtful students of coöperation in the United States are coming definitely to the conclusion that the success of the movement among agriculturists in this country today bids fair to have its success threatened, or at least curtailed, if it does not put social considerations in a position of greater importance.

This is not to say that the social point of view is by any means absent. There are two distinct ways in which one finds it expressed among our coöperatives, although the social philosophy of the movement has been by no means fully grasped or accepted by the rank and file of membership, or even of officials and managers. These two expressions of the social implication of the coöperative movement may be described respectively as external and internal. The first expresses the ideal of service to the public — honest, dependable goods of high quality at prices fairly related to conditions and costs of production, effort being constantly exerted to lower such costs and improve quality and service. The second concerns the group responsibilities, discipline, and constructive effort which must be developed by the individual membership of coöperative organizations if the whole movement is to succeed in any large way.

---

[1] Reprinted by permission from *Farm income and farm life,* Dwight Sanderson, editor, University of Chicago Press, 1927, pages 248–251.

When a coöperative organization starts out to build a broad and permanent market for its product, it soon becomes apparent that results can be achieved only in proportion as it builds up a reputation and establishes a trade and consumer preference for the product of the coöperative. It becomes evident also that the public will not have that good will which causes them to call for the product and to sympathize with the objectives of the association furnishing it unless there has been developed in their minds a belief in the sincerity of the producers and the genuine worth of their product. This is achieved only in proportion as the coöperative furnishes a means of bridging the long chasm between the original producer and the ultimate consumer, so that under the more complex conditions of modern economic organization the personal relationship with all its social values is reëstablished — and, we may add, reëstablished on a plane of more effective organization than in the earlier and simpler stages of direct selling by individual producer to individual consumer.

Probably one of the very best illustrations of this social value of coöperative organization is to be found in the case of coöperative milk marketing. Here the organization has a real belief in the health value of its product and the service which it can render in popularizing the use of this product. It has a definite responsibility also for the maintenance of high sanitary standards. Third, however, it faces the necessity of satisfying the consumer that the price which he is asked to pay is as low as is possible in view of the cost of producing a product of proper quality and handling it with as great efficiency as it is possible for a large-scale organization to develop. The "conference" method of collective bargaining for a scale of milk prices presents a very fine example of the social process of give and take with organized producers arguing for a return to the farmer which will give him as high a standard of living as his city brother, at the same time that the city consumer is arguing for a price which will give him this wholesome ingredient of his diet at as low a price as possible, and each challenging the other to do whatever is possible in the way of eliminating wastes or unnecessary costs in the handling of the business.

Likewise, the fruit grower who puts the big berries on the top of the box, or uses the "stove-pipe pack" for his apples, must bring his conscience up to the plan of exact standardization before he can function in the membership of a coöperative association. One of the important cotton coöperatives has gone so far as to take back cotton which has been accepted by the receiving department of a big mill and paid for by the company simply because the president told them that the product manufactured from this cotton was being found by consumers not to come up to the customary standard. When coöperation gets to this point of putting service to the buyer above all other considerations, it is clear that it has developed distinct social values.

The second social product of the coöperative movement concerns the attitudes and actions of the member with reference to his own group organization. If coöperative enterprise is to succeed in any measure, it must do so by reason of the coördinated, dependable group action of its members. The very initiation of a coöperative enterprise reflects a consciousness of common interest and joint purpose which itself puts a producer group in a quite different posture for further economic activity. The writer is a firm believer in the value and importance of the producer's contract as a feature of standard coöperative organization. But experience has shown that to place reliance on the letter of this document and to secure membership by a high-pressure campaign for getting signatures on the dotted line, instead of getting that consciousness of "common interest and joint purpose" referred to above as essential for the effective working of any coöperative project, is to invite disaster.

A large amount of experience is accumulating to demonstrate that the weakest point in coöperative enterprise in this country at the present time is the tendency of members to be "in and outers," to shop "around" between their own coöperative and other marketing agencies, and to judge, often very incorrectly, on very inadequate evidence the value of the coöperative on a purely dollars and cents basis. Whatever the possible benefits which may come to coöperative organizations through improvements of selling efficiency, of technical methods of handling the product, or of business management within the organization, I believe confidently that manyfold more advantages will accrue from the whole-souled acceptance of the social or group point of view on the part of members by and large. In other words, once a majority of our farmers adopt fully and frankly the belief that the problems of modern complex marketing are not to be handled adequately by the individual, be he ever so good a "natural-born horse-trader," then we shall have the proper psychological background for successful coöperation.

This means the acceptance of the point of view that the individual can function most efficiently under modern conditions only by becoming a full working member in a group organization whose size is commensurate with the industrial interests involved, but which has its methods of operation, its discipline, its adjustment of responsibility and benefits carefully worked out in the interest of efficiency and equity under control of the whole membership through a democratic system of government. When one accepts that philosophy, not only does he put himself in the position of receiving any expected benefits of coöperation but also in a position of responsibility for producing those conditions of joint, and to some extent controlled action out of which such benefits can definitely be produced.

In European countries coöperative organizations frequently perform social functions outside the strict sphere of their commercial activities, such as maintaining libraries, classes, sick relief, and recreational facilities. In America these functions are already in the main provided by other agencies. However, the coöperative movement, resting on the chief financial interest of a community, has a great power for social good if it merely develops and trains the social consciousness of its members. It thereby makes them better material for every social institution with which they come in contact.

4. RURAL HEALTH[1]

By W. F. Draper

Assistant Surgeon General, United States Public Health Service

In the field of public health there is to be observed an outstanding anomaly of modern science. The achievements of scientific medicine since the time of Pasteur have made available to the people the means by which they might, in large measure, be freed from the burden of sickness. Yet a large number of preventable disorders still impose a toll of billions of dollars upon the the nation each year, and cause widespread suffering, inefficiency and disability. Preventable diseases are not prevented largely because adequate funds and personnel have not been available.

---

[1] Reprinted by permission from *Farm income and farm life*, Dwight Sanderson, editor, University of Chicago Press, 1927, pages 252–256.

In the United States there are at most times, about 2,000,000 persons seriously ill; of these approximately 600,000 are in hospitals. The number of persons "who either have diabetes or will develop it, is about 1,000,000." There are at all or most times about 700,000 tuberculous persons. Of the children and young people now in schools and colleges, almost 1,000,000 will enter hospitals for mental diseases at some time in their lives, if present rates for first admissions continue. In one recent year there were over 100,000 cases of smallpox, a disease which might have been eradicated years ago. In addition there are a multitude of defects and minor ailments which cause an inestimable amount of inefficiency. The burden of these maladies falls upon the rural districts quite as much as upon the cities.

Other diseases impose an even heavier toll upon the country. Each year probably 700,000 or more persons are sick with malaria. Hookworm disease, about ten years ago, affected, according to one estimate, over 4,000,000 persons south of the Potamac and east of the Mississippi. Although its prevalence has been greatly reduced, many thousands still suffer from it. Pellagra, confined chiefly to rural areas, affects more than 25,000 persons chiefly in country districts of the South.

In general, perhaps 50 per cent of disabling diseases might be prevented. Some disorders might be almost entirely eliminated by the application of measures already developed. These include malaria, smallpox, and hookworm disease.

The money cost of preventable disease cannot be computed accurately, but conservative estimates are practicable. Data are available which indicate that the cost to the public for disabling diseases, including the services of physicians and nurses and hospital service, is over $2,000,000,000 each year, that approximately $700,000,000 is being spent for medicines alone, and that the cost of decreased efficiency due to defects and minor ailments entails an annual loss of perhaps $3,000,000,000. Finally, it has been estimated that the total capital value of lives now needlessly lost because of disease is over $6,000,000,000. Using the conservative estimate that at least 50 per cent of disabling diseases, defects, and minor ailments are preventable, and assuming that 50 per cent of this loss falls upon the rural districts of the United States, it seems safe to say that the annual economic cost of preventable diseases in rural communities is well over four billions of dollars.[1]

The staggering cost of disease in rural districts is due largely to the inadequacy of existing medical and health services. At present there is a conspicuous shortage of physicians in the country. According to a report prepared by Matthias Nicoll, New York State Commissioner of Health, based upon data received from thirty-six of the forty-eight states, there is a universal tendency among physicians to abandon the rural districts in favor of cities, of those remaining a large portion are of the older generation, there is little tendency among recent graduates to seek practice in small communities, and in hundreds of rural districts medical care is strikingly inadequate or absolutely lacking. The shortage of hospitals is equally serious. Of the 3,068 counties in the United States, 44.6 per cent in 1925 had no hospital for local or community use. In some states the supply is less adequate than in others. In Georgia, for instance, only 41 counties out of a total of 160 had a hospital of any kind for the use of the general population. In Florida only 23 out of 63 counties had such hospitals; in Texas only 96 out of 253 counties; in Missouri only 43 out of 115 counties; and in Kentucky only 46 out of 120 counties.

The responsibility of controlling communicable diseases, and (to a large extent) of combating malaria and hookworm disease, rests upon official departments of health. Yet of 2,850 rural counties, there were at the beginning of 1927 only 337 which had whole-time county health officers, although in a few other counties there were whole-time public health nurses in charge of organized work. The Federal government makes available approximately $100,000,000 each year for the construction of rural post roads (with the understanding that each state accepting its proportion of these funds appropriate a like amount), while the government appropriates only $50,000 to $75,000 a year (less than one-tenth of one per cent of the larger amount) for the development of rural health work. No thoughtful health officer would begrudge the money used for good roads — he knows that they bring the farmer into closer touch with rural physicians and nurses. He would not have less money spent for roads but more provided for public health work. For the activities of city, rural, state, and Federal public health agencies combined there was available in 1923 about $70,000,000 — less than one twenty-second of the money spent that year for tobacco, and approximately one-third of the money expended for coffins and funerals. Surely, were the people of rural America familiar with these facts, they would take steps to spend a more nearly adequate amount of money for public health work.

---

[1] Fifty per cent of the sum of the first three amounts is $2,850,000,000. To this amount $6,000,000,000 is added in order to give the total cost of preventable disease in the United States. Fifty per cent of this total gives $4,425,000,000, the approximate cost in rural districts.

Efficiently organized health and medical activities result not only in a reduction in the amount of sickness and the number of deaths, but, in many instances they bring about a specific saving of money. Hookworm infection among certain sections of Virginia a few years ago affected nearly 100 per cent of the school children, and many adults were pallid, anemic, and sick. "Thanks to the state Board of Health," recently wrote a physician practicing in these sections, "these same people are now healthy, prosperous, and happy. I know of several families of prosperous farmers that are now enjoying touring cars of their own, who, a few years ago, on account of hookworm, were more or less dependent on charity."

Substantial reductions in the prevalence of malaria have been brought about at an average annual per capita cost of about one dollar; and reductions achieved by demonstrations have been maintained at an average annual cost of only twenty-five cents per capita. After a farmer has paid a physician fifty dollars a year to attend various members of his family suffering from malaria, and then, after he has paid a dollar extra on his tax bill for the support of a programme of malaria control measures, he finds that he does not have to call a doctor for twelve months on account of this disease — such an experience is not uncommon in the rural districts of the South — there is little question in the farmer's mind regarding the profitableness of this type of public health work.

Within natural limitations every rural community can determine its own death rate, and, what is more important, money will buy health and bring to farmer and city dweller alike a higher degree of efficiency and joy in living.

LVII. URBAN STANDARDS OF LIVING

1. POVERTY IN AN INDUSTRIAL COMMUNITY[1]

By Paul Blanshard

Field Secretary, League for Industrial Democracy

Gladys Caldwell[2] met us at the door of her four-room cottage in the mill village. It was one of a row of dingy cottages out in Poinsett, across the meadows at the edge of Greenville, just beyond "nigger town." I had said to one of the strikers from the Poinsett cotton mill: "I want you to take me to one of your homes where a woman keeps the house going for the wages that most of you are getting. I should like to talk to a woman about washing and doctor bills and milk, and I want to see her house. Don't take me to a widow with five or six starving children: I can find such people in New York. What I want is the story of how you normal, strong people live on your average wages of twelve dollars a week."

Gladys Caldwell invited us in. We sat by a tiny fireplace in her front room, which was also her bedroom. On the walls were a picture of Jesus and a calendar. In the room were a bed, a trunk, and a dresser; in the room opposite were a trunk and a bed; in the back corner room was a bed; in the kitchen were a table, a bench, and an oil stove. In the four rooms there were four chairs. The house had no plaster, no rugs, no heating stove.

As she talked Mrs. Caldwell was vivacious and eloquent, with flashing brown eyes and flashing white teeth. From time to time she spit snuff into the fireplace with perfect nonchalance and marksmanship. Her husband came in before we were through, a big, upstanding man, strong and steady-eyed. He is thirty, she is twenty-nine.

---

[1] Reprinted by permission from the *Nation*, May 15, 1929.

[2] "Gladys Caldwell" is not the real name of the mill woman Mr. Blanshard interviewed. Otherwise her story is set down as she related it — the story of how a family of seven finds it possible to live on $22.80 a week, or forty-six cents each per day. — Editor, the *Nation*.

Here is Gladys Caldwell's story as it found its way into my notes.

Yes, I have a husband and five children. I'm a weaver; at least I work in the weave room fillin' batt'ries. I get paid by the day. No, I don't mind tellin' you about how I live. It's bad enough, and we mill folks have stood enough without kickin'.

I get up at four to start breakfast for the children. When you got five young uns it takes a while to dress 'em. The oldest is nine, and she helps a lot. The others are seven, five, four, and three. What do we have for breakfast? Well, we usually have bread and butter and syrup. No, we don't get any sweet milk. We get a gallon of buttermilk every day from Mrs. Rochester for twenty-five cents. The children like it; they don't take much to sweet milk. They ain't used to it.

After I've got the children dressed and fed I take 'em to the mill nursery, that is, three of 'em. Two go to school, but after school they go to the nursery until I get home from the mill. The mill don't charge anythin' to keep the children there. I couldn't afford it anyway. We have breakfast about five, and I spend the rest of the time from five to seven gettin' the children ready and cleanin' up the house. That's about the only time I get to clean up. Ruby washes the dishes. Ruby is nine.

My husband and I go to the mill at seven. He's a stripper in the cardin' room and gets $12.85 a week, but that's partly because they don't let him work Saturday mornin'. They put this stretch-out system on him shore enough. You know he's runnin' four jobs ever since they put this stretch-out system on him, and he ain't gettin' any more than he used to get for one. Where'd they put the other three men? Why, they laid 'em off and they give him the same $12.85 he got before.

I work in the weavin' room and I get $1.80 a day. That's $9.95 a week for five and a half days. I work from seven to six with an hour for dinner. I run up and down the alleys all day. No, they ain't no chance to sit down, except once in a long time when my work's caught up, but that's almost never.

At noon I run home and get dinner for the seven of us. The children come home from school and the nursery. We have more to eat at noon. We have beans and baked sweets and bread and butter, and sometimes fat-back [fat bacon] and sometimes pie, if I get time to bake it. Of course I make my own bread.

It takes about $16 a week to feed us. We get nearly all of it at the company store with jay flaps. They are the slips that the company gives you for buying groceries with after you've worked all day. Then you can get your groceries right away and don't have to wait until the end of the week for your pay. If we didn't have 'em, some of the people would starve before the end of the week, shore enough. I get my butter from Mrs. Rochester. She sells it for fifty cents a pound, and we use half a pound every other day.

Maximum Weekly Working Hours for Women

(From the *Business Week*, October 12, 1929)

48	Massachusetts
49½	New York
54	Arkansas, Maine, New Hampshire, New Jersey, Oklahoma, Pennsylvania, Rhode Island, Texas
55	Connecticut, South Carolina
56	Vermont
57	Tennessee
60	Georgia, Kentucky, Louisiana, Mississippi, North Carolina
No limit	Alabama

After dinner I wash the dishes and run back to the mill. We don't have any sink, but there's a faucet with runnin' water on the back porch and a regular toilet there, too. You can see we have electric lights, but we don't have any heatin' stove. I cook with an oil stove, and we have these two fireplaces.

When the whistle blows at six, I come home and get supper. Then I put the children to bed. There's a double bed here and a double bed in that other room and a double bed out in the back room. That's for seven of us. The baby's pretty young. I s'pose all of the children'll go into the mills when they get a bit older. We'll need the money all right. Yes, my father and mother were mill workers, too, and they're still livin' and workin'. He gets $18 a week, and my mother gets about $3 a week for workin' mornin's. There was four of us children in the family. My husband's father and mother worked in the mill, too.

We've moved five times since we was married — that's eleven years ago. It don't cost much to move when you move a little way. We ain't been outside of South Carolina. They ain't nothin' in movin' from one mill to another in the long run. When we moved here from Woodside, just over the fields there, it cost us $2.50 a load for the two loads.

HOURS AND WAGES OF VARIOUS CLASSES OF TEXTILE WORKERS *
(Texas wages from 1927 average of 14 mills; other states from 1927 United States Department of Labor *Bulletin No. 446*)

	Picker tenders			Card tenders			Drawing frame tenders			Slubber tenders		
	Hours per week	Wage per hour	Wage per week	Hours per week	Wage per hour	Wage per week	Hours per week	Wage per hour	Wage per week	Hours per week	Wage per hour	Wage per week
Alabama.......	56.6	$.219	$12.40	54.8	$.231	$12.66	55.0	$.184	$10.12	54.9	$.293	$16.09
Connecticut....	51.9	.363	18.84	51.1	.362	18.50	49.8	.323	16.09	51.3	.463	23.75
Georgia........	56.8	.215	12.21	57.2	.232	13.27	55.9	.202	11.29	56.6	.306	17.32
Maine.........	54.0	.353	19.06	53.6	.370	19.83	53.6	.263	14.10	53.6	.470	25.19
Massachusetts..	49.1	.394	19.35	49.3	.431	21.25	48.0	.331	15.89	50.3	.498	25.05
New Hampshire	54.2	.388	21.03	54.2	.418	22.66	54.0	.328	17.71	54.0	.513	27.70
New York.....	48.4	.387	18.73	48.7	.459	22.35	48.0	.315	15.12	49.2	.599	29.47
North Carolina.	55.7	.264	14.70	55.9	277	15.48	55.0	.299	16.45	55.8	321	17.91
Pennsylvania...	53.3	.421	22.44	52.9	.420	22.22	52.3	.377	19.72	....	....	....
Rhode Island...	50.5	.388	19.59	51.5	.431	22.20	49.7	.310	15.41	50.8	.519	26.37
South Carolina.	55.0	.251	13.81	55.0	.244	13.42	55.0	.269	14.80	55.0	.307	16.89
Virginia........	55.4	.250	13.85	55.2	.284	15.68	....	...	....	55.3	.339	18.75
Texas.........	55.4	.233	12.88	55.4	.232	12.81	55.4	.209	11.56	55.4	.209	11.56

* The material for this table is taken from *Dallas — manufacturing facilities and opportunities*, a booklet prepared by the Industrial Department of the Dallas Chamber of Commerce and published by Industrial Dallas, Inc.

I rode around right smart when I was single, but I ain't been on the train more than once a year since. My husband reads a book once in a while, but I don't get time. I went through the third grade in school and then I went to work in the mill. I was nine years old when I started work at Number 4 in Pelzer. My husband didn't go to school neither, but he managed to pick up readin' and he reads books. Yes, we take a paper.

When supper is over I have a chance to make the children's clothes.

Yes, I make 'em all, and all my own clothes, too. I never buy a dress at a store. I haven't no sewin' machine but I borrow the use of one. On Saturday night I wash the children in a big washtub and heat the water on the oil stove. Then I do the week's ironin'. I send the washin' to the laundry. I just couldn't do that, too. It costs nearly $2 a week. Our rent in this house is only $1.30 a week for the four rooms, and we get water and electric lights free.

I always make a coat last seven or eight years. My husband gets a suit every two years, but he ain't had one for the last six years. He got an overcoat about four years ago. Things have been pretty hard. I like the movies, but I haven't been to one in about six years now. Not since the children was young.

Maybe my children ought to get away from the mill village, but if they went anywhere they would go back to the farm, and there ain't no use doin' that. The farmers haven't got it as good as we have.

I don't get time to go to church. My husband goes to the Methodist church. Most everybody goes to church here. Sunday's about the only day I get to rest any. Seems as if I just have to have a little rest then.

I press my husband's clothes. He half-soles the children's shoes and all our shoes. See those! Those soles on my shoes came from the dime store and cost twenty-five cents for the pair. He puts 'em on with tacks. I make a dress for myself about every six or seven months out of cloth I buy in town. It costs about twenty-five cents a yard.

We been lucky about sickness. The children ain't been sick at all for years. When the doctor comes, he charges us $2.50 a visit; but right now that the strike is goin' on, the doctors is callin' for nothin', and the barbers is cuttin' the men's hair for nothin'. They's pretty much with the strike.

There's one colored doctor over here, but he don't come to see anybody. Some of the folks goes to see 'im for sores and such like. They say he's a herb doctor; but as fur as deliverin' babies is concerned, I never heard of him deliverin' a white baby. Let's see, my babies cost $25 except the first one, and that cost $30. 'Tain't every doctor will do it for that. I never had any trouble. I worked up to two months before, mostly, an' I went back when the children was about four months old.

The nursery'll take 'em when they're three weeks old. I had to hire a colored girl when the babies come. That cost $7 a week.

Birth control? What's that? . . . Oh! Sure, we'd be glad to have that if it didn't cost no money. Yes, that's my address.

Once I mashed my thumb in the mill. I was out for two months with it and I didn't get anythin'. I went to pull a loom, and the handle on the lever slipped because the gear was too tight, and it mashed my thumb. The company don't pay anythin' for a thing like that.

Usually I get to bed between ten and eleven at night.

2. LIVING AT THE PROFESSIONAL LEVEL[1]

By Chase Going Woodhouse

Profound secrecy has enveloped the way we spend our money. The budgets of the very poor and of those fighting for higher wages have been displayed in many a document, but we of the middle class with the "business and professional standard" have maintained the tradition that "it is not nice to talk about money." But the times are getting us too! How can we make ends meet? What are the others in our group doing? How can the Dollivers down the block run a car and send the children to college too? Where can we get information and advice to tell us whether or not we are spending our income so as to get the most from it?

Almost daily, letters come to the Bureau of Home Economics at Washington asking for help in spending. More and more they have been coming from the middle income groups. Those from families with $3,000 or $4,000 a year are usually written by the wife, and ask for specific help with her food and clothing expenditures. But higher up the income scale it is the husband who is sending out the S.O.S. Why can't they save more on $8,000 or $9,000 a year? Why does the salary of $14,000 — which looked so large when he jumped to it from $9,000 — now seem far from enough to cover what he and his family feel are the minimum essentials in the country-club area where they live? Why can't he accumulate enough to start out toward his goal of economic independence?

---

[1] Reprinted by permission of the Survey Associates, Inc., and the author from the *Survey Graphic*, November, 1928.

What are we all trying to do? Have we a standard of living in mind which it is impossible for us to maintain? Is there any "one best way" to spend a given income; or isn't it an extremely personal matter with each family? There is no doubt that the latter is the case. Nevertheless, it is a help to know what others like us are doing and thinking.

For this reason the Bureau of Home Economics has been collecting data on the expenditures of business and professional families scattered over the country. That the group is interested is amply testified to by the patience with which each family has filled in forms and sent in detailed weekly records of all expenditures for an entire year, or has answered the myriad questions of the field worker who has been sent to interview them. Full details of expenditures for a year have been obtained from some two hundred families, all of the business and professional group. In most cases the wife is a college graduate. The husbands are doctors, lawyers, engineers, college professors, schoolteachers, research men, civil servants, owners and managers of factories or in business positions of various types. The family incomes range from $2,200 to $125,000 in one extreme case, but the majority are in the income group of around $4,000 to $7,000.

Two hundred families is a small sample of the whole business and professional group. Still it has been surprising to note the homogeneity of taste and desires. The family stories read much the same whether they come from Washington, Nebraska, South Carolina, or Pennsylvania. New York City, of course, shows differences, but these are matters of expenditure forced by the environment rather than matters of inherent desire. In what they want, in what they are trying to get with their incomes, these families are all much alike, though in their actual expenditures limitation of income necessarily makes a difference in the way desires are expressed in concrete goods.

Fundamentally all these people want some feeling of security, some provision for the future; they want "proper housing," a good neighborhood, space and privacy, a suitable play area for the children; they want their children to have the best preparation for life, both physical and cultural, that they can provide. Good furniture and artistic surroundings, access to books and periodicals, a circle of friends — these are the main wants under the heading which the budget-makers used to call "higher life." A car is a necessity in most situations if the family is to see friends or to get a glimpse of the country. Clothes are secondary. Less and less are they playing a rôle of any importance in the standard of living of this group. Probably the fact that the ready-made garment industry has so democratized style that it is no longer a badge of class, has something to do with this situation.

Now how do these families actually spend their incomes? Averages mean little. It is hard to say that certain families are typical, as spending is such an individual thing, but on the whole there are certain patterns which are more or less representative. Take, for example, the family we might call the Woodwards. There are the mother and father and two boys, seven and four. The man is an engineer. The wife has been trained in home economics and was professionally employed before her marriage. Both are of New England stock and have been well grounded in the philosophy of thrift. They live in one of the more distant suburbs of Washington, D. C., where most of the people are government workers and where most of the families have about the same income. Their house cost $9,500 and carries a mortgage of $4,000. The furniture is simple but in good taste, and a few heirlooms give the house the tone they would feel was essential. They own a small car, but good care and careful usage give it a long life. Mr. Woodward belongs to one professional organization and to a Washington club in which membership has a professional value. He uses it a minimum amount, however, and, unlike the wives of many members, Mrs. Woodward does not use it for luncheon or for entertaining. In fact, they regard the club as definitely a vocational and not a recreational or social organization.

The older boy goes to the public school, and both parents are active in the parent-teacher organization and in other community activities. Apart from these they spend little on recreation; the theaters and concerts are far from their suburb. They drive into the city to attend a down-town church, and get much satisfaction out of the sermons and group discussions.

The wife makes practically all her own clothes, even her coats. She has arranged with a tailor from one of the down-town stores to come to her house in the evenings and cut and pin together a coat or dress. Thus for a small sum she obtains a good cut, and it is a simple matter for a person of her skill to do the actual sewing. She watches the stores and buys at special sales and in quantities where it is more economical. The only service employed is a laundress and occasionally a young girl to sit with the children in the evening. Last year $104.30 covered the cost of this service and of the little laundry which was sent out. The wife herself does such jobs as painting the kitchen and the woodwork and waxing the floors, and the husband spends his spare moments on the outside of the house and on the garden.

How the Woodwards Used $5,519.72

Expenditure	Amount	Percentage
Food	$650.91	11.7
Clothing	390.98	7.0
Operating *	535.76	9.7
Housing †	1,543.39	28.4
Health	265.40	4.8
Development ‡	579.21	10.4
Furniture and equipment	153.90	2.8
Automobile	279.40	5.0
Personal	89.61	1.6
Savings	1,031.16	18.6
Total	$5,519.72	100.0

* Includes fuel, light, telephone, laundress, car-fare, etc.
† $330, or 6 per cent, on equity in house is added to actual payments for repairs, taxes, and interest.
‡ Includes gifts, charity, recreation, vacation, etc.

Of course all this planning and actual work takes time, and the wife has little energy left for many of the things she would like to do. Summer vacations are as busy as the winter, since they have inherited a small farm and are anxious to improve it. In brief the Woodwards represent a goodly group who are following the more simple professional standard. They want the best they can afford for their children in the way of opportunities of the less expensive type. They are content with the simple social life of their suburb and have found their friends among people situated much as they are both financially and culturally.

Taking all their expenditures for the past year and adding 6 per cent on their equity in the house, their expenditures come to $5,519.72. The husband's salary is $4,200, and interest from investments brought in $510. A legacy of $5,000 was used in part to cover the cost of repairs to the house, but the bulk of it was invested. The summary on page 446 shows in detail how the Woodwards used their money.

What if the expenditures are about doubled? On the other side of the city, in a rather fashionable suburb, is another family, the Greys. Here the husband, a professional man and writer, makes a salary of $5,400, the wife adds $725 a year from her part-time job, the income from investments is $1,630, and during the year there were gifts from relatives amounting to $1,300, making the total cash income for the year $9,055. Their expenditures, including 6 per cent on their equity in the house, came to $9,216.50.

The Greys' Account Was $9,216.50

Expenditure	Amount	Percentage
Food	$1,028.79	11.1
Clothing	881.20	9.6
Operating	977.72	10.6
Housing *	2,145.10	23.3
Health	236.26	2.6
Development	766.82	8.3
Furniture and equipment	182.08	2.0
Automobile	343.26	3.7
Personal	112.56	1.2
Savings	2,542.71	27.6
Total	$9,216.50	100.0

* Includes $867.80, or 6 per cent, on equity in house.

The house, in an excellent situation, has nine rooms, and two baths and is valued at $19,500. There are two children, both in school. The homemaker has had special preparation for her job, and though she held a paid position before her marriage, has only recently resumed her outside work. She is active in many associations and takes a prominent part both in her neighborhood and in the larger life of the city. She is chairman of many committees and has numerous social contacts without in any sense being a part of the "social whirl." Her home is a model among her friends, and much thought has gone into the plans for the future of her two children and into the general management of the family life, including, of course, the expenditures. This family is representative of the professional standard on a high level.

Both husband and wife come from families which have been prominent in their communities for many generations, both have a keen sense of civic and social responsibilities, both want the best for their children but also the greatest possible chances for their own development. Their hospitality is simple but has a degree of formality necessary in their circle. This family does not have the pressure to save as would most families of this income level, since both will inherit sufficient to care for their future at about their present level of living. For this reason it is interesting to note that 27.6 per cent of their total expenditures fall under savings. Mrs. Grey is a careful buyer but she does not feel the necessity of devoting as much time to it as does Mrs. Woodward, since there is not as narrow a margin within which she must stay. However,

THE BLACKS LIVED ON $2,413.01

Expenditure	Amount	Percentage
Food	$689.68	28.7
Clothing	169.28	7.0
Operating	227.46	9.4
Housing *	565.60	23.3
Health	15.10	.6
Development	197.37	8.2
Furniture and equipment	49.49	2.2
Automobile	111.43	4.6
Personal	18.82	.8
Savings	368.78	15.2
Total	$2,413.01	100.0

* Includes 6 per cent on equity in house.

if we compare the expenditures of the two families on a percentage basis, it is evident that they are much alike. The great differences seem to appear in housing and in savings. But these are due to the fact that the Woodwards spent an unusually large sum in repairs to the house. Another year this would have gone into savings.

While the Greys have more leeway in expression of their wants than have the Woodwards, their underlying desires are not so different. There is, however, a great difference in the opportunities which the two women have for a really broad and satisfying life.

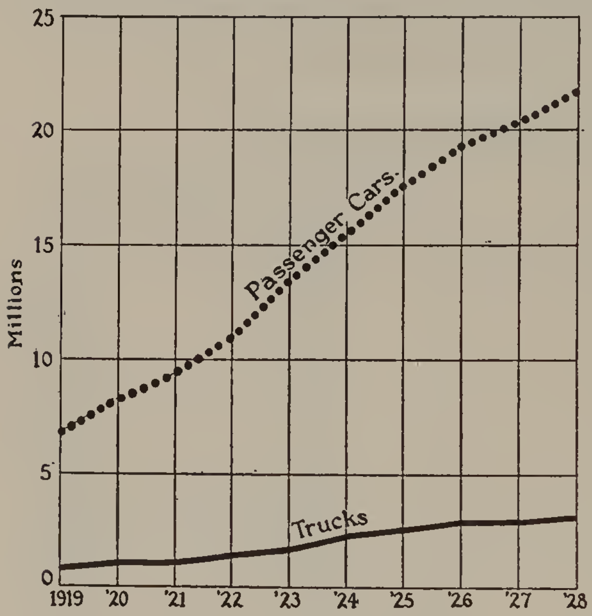
Two Boys in College and $5,349.53

Expenditure	Amount	Percentage
Food	$ 951.95	17.8
Clothing *	382.97	7.6
Operating	310.92	5.8
Housing (Rent)	520.00	9.7
Health	84.20	1.6
Development †	1,546.62	28.9
Furniture and equipment	85.65	1.6
Automobile	1,043.57	19.0
Personal	379.85	7.1
Savings	43.80	.9
Total	$5,349.53	100.0

* $302.86 of this amount went for clothing of three sons.
† $1,138.48 of this amount was spent for formal education.

The Greys' accounts for the year showed the distribution of their income, given in the table on page 447.

Where the income is cut in half rather than doubled, the percentage distribution undergoes a distinct change. For the lower incomes, the Blacks may be taken as representative. Here there is a young business man of thirty-two, with a wife and one child eight years old. They are buying a small house in one of the newer and less expensive suburbs. The wife again is a trained home-maker and a careful spender. Food represents a much more important item in their budget than in the case of the higher incomes; health does not show the routine examinations which all the Greys have each year nor the examination by a child specialist which each of the Woodward children had during the year. The Blacks did not have even routine dental work. Another year, of course, their health expenditure might be very different, but that would represent real illness and an acute emergency. Though food represents a larger percentage of their total expenditures than in the higher incomes, still they spend about the same percentage for housing and save almost as large a proportion of their income as the Woodwards. Their total expenditures for the year came to $2,413.01.

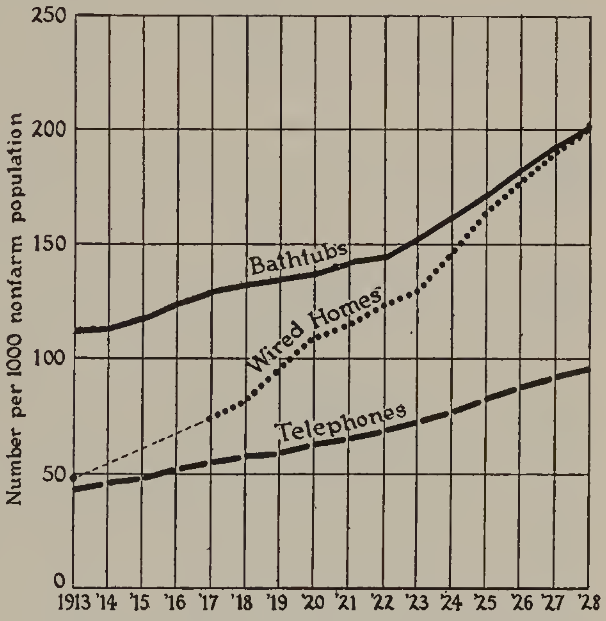


A Trend of Living Standards

Registration of automobiles in the United States. Note difference in changes of personal and industrial types of automotive vehicles. Data source: National Automobile Chamber of Commerce, *Facts and figures of the automobile industry*, 1928, page 6.

These three Washington families have small children in the public schools, and such expenditures as they have for formal education are comparatively small and cover only such things as music and dancing lessons. How do the families manage when there are children in college? One family which lives in a city in central Massachusetts has two boys in college and a third in high school. The husband has a salary of $4,300; in scholarships and summer earnings the boys accumulated $673.85, making a total cash income for the year of $4,973.85. The wife received a legacy of $1,900, part of which went into a car. This family rents. Their total expenditures for the year came to $5,349.53. Their expenditures are very different from our other families in that development takes a much larger percentage of their income, saving is almost absent, personal expenditures are relatively much higher, and housing lower. The automobile was bought during the year, which makes an unusually large percentage of the income fall under this head. Here is a family in which the emphasis is upon education and a chance for enjoyment for the children. Most of the money spent for vacation was paid for camp expenses for the youngest boy. The clothing expenditures for both the wife and husband are low and neither bought any major garments during the year, the most expensive item being a pair of shoes at $12 for the wife. Once the young people are through college and out on their own, the set-up of expenditures will no doubt be very different.

This family has always had heavy expenditures and was not able to accumulate during the years when the children were small. As will be seen, the wife does practically all the housework including most of the laundry. Postage is high because the college boys send their laundry home. Insurance is so small that it would be far from adequate in caring for any emergency, but no doubt the boys could meet one if it should come. The details of expenditures taken from the accounts are shown on page 449.



OTHER TRENDS OF LIVING STANDARDS

Telephones, bathtubs, and wired homes per thousand non-farm population in the United States. Data source: National Bureau of Economic Research, *Recent economic changes*, Vol. I, page 67.

It is not necessary to point out where there are real gaps in this list of expenditures. Education and the needs of the children claim the major part of the income after food and shelter are provided. Perhaps the family should not have bought the automobile; perhaps somebody could discover an item here and an item there which might be cut. But, after all, given the main problem, the income and the need for education for the children and for some relaxation for the parents, is the choice very great? Isn't it possible that Dr. Peixotto is correct when she says that $7,000 a year is necessary to cover the cost of the professional standard of living for a family with two children? This is not saying that we all "ought" to have $7,000 a year, or even that we could have it under present economic conditions, but that the desires which the professional group have, the things which they feel are essential to a well-balanced life, the things the lack of which means hardship and worry, cost $7,000 a year.

Compared with other groups in the community, the professional and business groups in the middle income class are well off. Among the lower income groups food, housing, and clothing take most of the income. Among a group of Minnesota farm families, Professor Zimmerman reports that 34.5 per cent of the income went for food, 24.6 per cent for clothing, and 16 per cent for housing. Among the industrial population, a group of mothers' pension families in Buffalo spent 53.7 per cent of their money for food, 13.4 per cent for clothing, and 17.1 per cent for shelter. Dr. Houghteling found that just one-half of the families of unskilled laborers which she studied in Chicago were able to meet the standard of living set by the Chicago Standard Budget for Dependent Families, even when all sources of family income were considered. If the earning of the chief wage-earner alone were available, more than two-thirds of these families fell below this standard. These families spent not less than 31.3 per cent of their income for food, and some were spending as much as 42.8 per cent for this item; nearly one-tenth were paying more than 30 per cent for rent. In none of these groups were savings more than small emergency funds, and expenditures under "development" were minute.

But after all, isn't this quite another problem? Isn't it one question how the national income should be distributed among the different classes in the community and quite another how each class distributes its money over its different wants and what it strives to obtain? Perhaps the professional and business standard calls for $7,000 a year; perhaps it calls for more; perhaps some families in this group, like the Woodwards and the Blacks, can be happy and contented and apparently well cared for on much less. Perhaps it is a question of philosophy rather than of economics. Some of us live in environments and have personality make-ups which cause us to demand much from this world; others of us are content with that state in life to which it has pleased the powers that be to call us.

But one thing is certain. Many in the professional group are dissatisfied and feel that somehow the standard of living must keep pace with the development and prosperity of the nation; and after all, isn't it the discontented people who make the world move and who usually manage to shape it somewhat to their way of thinking?

3. PARK AVENUE [1]

By Clara B. Thompson
Author and Journalist

Junior, aged three, had found a colored crayon, which gave long, lovely tails to the baby angels on the walls. He was very much occupied, very much intent on his work.

"You naughty child!" His English nurse snatched the chalk from him. "Now you go straightway to the yard and don't you dare step back in the house until I come to fetch you."

So Junior went. He went from his sun room, which he was redecorating, past his sleeping rooms, bath, and shower, through his play rooms, across his porch, and into his garden — twelve stories above the street.

To Junior, the benefits of the playground were nil. But the landscape artist who laid it out collected $10,000, while the architect who handled the nursery proper drew three times as much. For Junior lives and moves and has his being on the top of a Park Avenue apartment house in the newest and most moneyed stronghold of New York aristocracy.

Beneath him, in a spacious, ten-room apartment, dwell his father and mother — a charming young couple who look to their own parents for their annual rental of $25,000. And all about him within the three-mile area that constitutes Park Avenue are other families economically housed at $7,000 a year; comfortably at $20,000; or luxuriously at $40,000, until the grand total reaches $18,000,000.

It is an amazing development, this Park Avenue, and probably few are more surprised than the lucky real-estate men who fostered it. Seventy-five years ago it was wild country infested by goats and squatters, objectionable in the order named. Fifty years ago it was a roof over the tracks of the New York Central Railroad, with no pretension whatever. Today it has become the residential successor of Fifth Avenue, with an annual purchasing power in excess of half a billion dollars.

---

[1] Reprinted by permission of the *Ladies Home Journal*, copyright 1928, Curtis Publishing Company, Philadelphia.

Where luxuries are rare

Actually, its yearly expenditures are more than $280,000,000, with one apartment house boasting of its own sixty millionaires, and another of its half dozen tenants with a per capita income of three-quarters of a million.

"Billionarea" the tradesmen call it, and billionarea it is — smart, exclusive, and shining with gold.

This opulence was evident in an office in which I stood and looked down upon the avenue, some nineteen stories below. It was an imposing room, with a massive mahogany desk, chairs luxuriously upholstered in leather, ornate, well-filled book shelves, fine Japanese prints, a curious dark screen with a vivid splash of oriental color, and an old Persian rug. The desk — which was clear of papers, according to the highest executive tradition — held three objects: a metal ruler heavily embossed, a crystal jug of ink, and a little silver frog on an island of amber. Pushing the frog forward would silently summon an office boy; backward, a stenographer.

But at that moment the owner wasn't pushing in either direction. He was deeply engaged in giving me facts of the case. "Luxuries?" he repeated in answer to a question of mine. "Luxuries? No, I haven't any first-hand information, and my friends are as financially short as I am. The truth is, there are no luxuries on Park Avenue."

My smile may have contained doubt, for he made haste to continue: "All right. Take me as an example. I started the day with a grand family fracas over clothes. My wife wanted a gown for a garden party, when she already has a dozen she's never worn. I simply can't afford it." As he developed the theme, it was plain to see that he was pressed for money. And I happened to know that he was also pressed for time.

Across the bay from his country residence is a favorite club house of his. By motor, over a smooth and beautiful roadway, it is seventy minutes distant. But a speed boat can clip the waters in a scant fourteen. Recently, therefore, he purchased six at a nominal $7,000 per boat — one for himself, one each for his wife, his son, and his daughter, and the two others for guests. Sometimes in a single day he himself is able to save nearly two hours, to say nothing of the prodigious time economies of the wife, the son, the daughter, and the guests. He was right in his major premise, however: after the necessities are covered, many of the Park Avenue residents are without a surplus. Living comes so high.

Millions for food

Food alone is listed conservatively at $20,000,000 in the *Park Avenue Social Review*, the official and non-purchasable organ of The Park Avenue Association. The figure sounds impressive until one talks to managers at two or three of the small, smart hotels that the avenue patronizes almost as often as it does its homes.

A nice luncheon that will include canapé, melon, consommé, lobster, squab, asparagus, and a sweet can be served at $15 a plate, though an adequate one may be managed at $7. A hostess will give about fourteen such luncheons in the course of the season and have guests varying in number from six to eighteen. Flowers and table decoration will add from $40 to $100 more.

Lower than $7 a plate is a risk. There is one hostess, as rich as she is parsimonious, who has a fixed price of $3. She orders elaborately, announces her rate, and declines to change it. Her alibi is varied. "I don't care anything about the people I'm having," she will assure the manager. "They're my husband's relatives" — or "business friends" — or "stupid bores. Do what you can, will you?"

Of course the manager can do surprisingly little. And while the guests receive the merest dabs of chicken breast or hors d'oeuvre or crisp romaine, which they eat in pained astonishment, the hostess berates the chef, the maître d'hôtel, and the management; there can be no rebuttal. The only difficulty with her system is that automatically the fault-finding would preclude her entertaining the guests a second time at the same hotel. Dinners, of course, come higher than luncheons — about twice as high, in fact, though a real dinner party may cost almost any amount.

A gentleman recently announced his daughter's engagement and entertained for fifty of her friends; and because she was an only child, the gesture was either a very careless or a very thankful one. He transformed a hotel suite into a Chinese garden with the aid of an artist decorator and $15,000 worth of flowers. The dinner, which cost just $25 a plate, was carefully worked out. There were caviar à la Russe with pancakes and whipped cream, green-turtle soup, imported English turbot, duckling with Madeira sauce and asparagus with oranges, mousse of cold ham with romaine salad and French dressing, peaches freshly brought from southern France, ice cream, cakes, and coffee. After dinner three orchestras at a total cost of $1,800 provided dance music until twelve-thirty, when a retinue of Chinese cooks slippered in and served a real Chinese supper at $5 per supper. Any heaviness that might have followed the second meal was dispelled by the arrival and instantaneous sparkle — $6,000 worth, to be accurate — of fifteen Broadway stars who stayed to a man until the five o'clock breakfast. This proved to be a simple English affair of fruit juices, kippered herring, bacon and eggs, and muffins, and cost only $3.50 a plate. At six o'clock, when the party concluded, a discriminating eye might have found the guests as wilted as the flowers, but by that time there were no discriminating eyes.

Incidentally, there were fifty guests invited and fifty attended, which is something of a record. Apparently the arrangements for the evening had leaked out in advance. It is not an unusual occurrence.

More than one hostess who is confronted with an unexpected male shortage might be surprised to learn that her supper of limp fruit cocktail, scrambled eggs, and bacon had been side-stepped for a cream soup, trout, breast of chicken, salad, and sweet. Telephone service is good, and tidings travel quickly. Besides, it is quite simple to accept all invitations and appear only where the food is best and the fun most furious.

Of course no small part of the expense of any luncheon or tea, supper, or dinner is in the decorations. Bon voyage dinners lend themselves charmingly to a mirror sea that carries a tiny steamer with the Statue of Liberty on one side and London Tower or the Pyramids or Eiffel, as the occasion may demand, on the other. The corsages for the girls and the boutonnières for the men will carry out the color scheme of the tables and the room.

Débutante parties and weddings see the most elaborate decorations, however, and require the finest of floral artists. A small wedding luncheon was recently served to a party of twenty. The table was transformed into a complete Italian garden, with miniature fountains at each end. The water played over illuminated glass bowls with a lovely iridescent effect, and the room was sweet with the scent of semitropical flowers. Trailing smilax joined the guests loosely to one another, and smilax was festooned also in the formal trees that, planted in tubs, lined the walls of the room. In this case the decorations cost $750, just twice as much as the luncheon itself.

Park Avenue wardrobes

Clothes, which follow food as a vital necessity on Park Avenue as well as elsewhere, have the staggering total of $94,000,000. The figure includes furs and millinery as well as suits, shoes, topcoats, dresses, and underthings.

It also includes a certain amount of overhead. For Park Avenue, when it is not outfitting itself in Europe, motors its way to softly carpeted, charmingly draped shops, there to purchase its boots, its gowns, its hosiery, and its chapeaux. Prices vary and so do requirements. But no woman would try to manage with less than twenty-five pairs of shoes, at a cost of $35 to $250 a pair, or a dozen hats from $25 to $100. Gowns have a wider range, from as low as $50 to more than $1,000, but $100 to $200 would be a good average price, and fifty an average number. Plain hose run around $8 a pair, while fancy ones may be as much as $50. In any case, they are by no means negligible in the clothing budget.

A woman not long ago came home from Paris with one trunk in which she was carrying six hundred pairs of chiffon hose at $7.50 a pair. She expected them to last her a good six months and to provide at the same time a number of little gifts for her friends. The fact that she lost that trunk has nothing to do with the story.

Children's clothes are expensive too. They vary in fashion quite as much as their elders' and cost proportionately, while a baby is very close to a Park Avenue luxury. In fact, one young father regards his as entirely a luxury. Just before his little son was born, he had to pay duty on a $12,000 layette that his wife had ordered in Paris. It requires from

$1,000 to $6,000 to usher any Park Avenue baby into being, sartorially speaking.

I was talking to a girl who has a studio shop on Park Avenue and who outfits many of the babies herself. She showed me in her attractive buff and green shop a little petticoat slip, hand tucked and trimmed with real lace, for $12; a wee dress of French voile embroidered with nasturtiums and edged in blue for $25; sheer christening robes untouched by any machine at $50, $60, $100, $150; a gingham bassinet for $65 and a lace and organdy one for $150; infinitesimal bathing suits and wrappers and cloaks and hats; until it was quite evident that a baby must be at the same time both exquisite and costly.

I said as much, and she gave me a look. "If people can afford to marry," was her cool pronouncement, "I guess they can finance the baby."

I had reason to recall the remark when I was considering the third basic necessity, which is shelter.

Rents and furnishings

Park Avenue rentals have been mentioned in passing, though many of the apartments are privately owned. But the furnishings we have yet to discuss. Linen, silver, china, glass, draperies, and furniture mount into staggering sums, hardly covered by the annual outlay of $15,000,000.

One little bride included in her trousseau $10,000 worth of linen. Among other things she had six pairs of sheets for each of her five beds, with the bottom sheet of soft English percale at $10.50 and the top of hand-woven linen with Spanish hand embroidery and a jewelry design in hand-drawn work at $65 to $95 each. Pillow cases to match averaged $40 a pair. Damask towels she had in three sizes — twelve dozen of the large at $39 the dozen, six dozen of the medium at $27.50, and six dozen of the small at $18. Bath towels following the color of the room were $6 apiece, and she required six dozen of them.

Park Avenue as a whole does not cater to the bizarre but rather to an expensive, sophisticated simplicity. Ceilings are high, windows and radiators and doors are properly spaced — if not at the time of building by the architect, then later by the interior decorator — draperies are light, and landscape or old Chinese wall paper may furnish a note of cheer.

Bronze and pottery, tapestry and paintings are blended into a delightful and satisfying unity. And neither time nor money is spared.

One unusually lovely apartment required over two years in the hands of an outstanding decorator, who spent five months in Europe collecting for it old rugs, old furniture, old wall paper. She had been given carte blanche and much encouragement by the owner. Yet it was with some trepidation that she presented him a bill for a quarter of a million one morning at eleven o'clock. One hour later, without a question, the account was settled!

Even when an owner is not redecorating his home at an outlay of $50,000 to $500,000, he is making little replacements and readjustments which are of sufficient size to encourage several unusual antique shops and various Fifth Avenue merchants.

One of the latter recently rearranged an entire floor with Park Avenue in mind. He designed it in long medieval galleries with vaulted ceilings, Gothic arches, and monastic stained glass. Here are housed the treasures that the buyer has combed the lanes and hinterlands of Italy, Spain, Germany, France, and Belgium to find; and here, sometimes, between the hours of twelve and one or four and five, Park Avenue may choose to stroll and look.

But on occasion six chairs and a settee are sold for $6,000; curtains of antique brocade for $1,500; a tapestry for $10,000; a pair of commodes for $9,000; an Aubusson rug for $1,800; a set of First Empire for $12,000. These are chosen with a discriminating eye and a close appreciation of value, for after clothes, let it be stated, Park Avenue knows its periods.

Servants, motors, trips

But necessities on Park Avenue are not covered by a simple inclusion of food, raiment, and shelter. A wise editor who lives on Park Avenue himself detailed some of the others for me. There must be servants and motors — $10,000,000 on the second named alone — and certainly an ocean voyage and a trip to Florida — another $15,000,000 — within the year. A country place, of course, and jewelry — not one set but half a dozen sets suitable for various gowns and occasions — and membership in clubs. This last must permit considerable latitude, for while the dues alone may not exceed $2,000 or $3,000 a year, incidentals may run into $30,000 or $40,000.

One man, for instance, recently entertained a dozen friends over a week-end. His greens fees at $10 a guest for Friday, Saturday, and Sunday were $360, while other club courtesies, including tips, cost him an additional $250.

There must be medical attention too. For life on Park Avenue is sufficiently exacting to require aid and advice from a corps of eminent and high-priced specialists.

Here, on occasion, a little economy may be practiced. A man and his wife were both having trouble with their eyes. The woman made her appointment from her house, had her consultation and received a bill for $150. The husband, who has a strain of canny Scotch, wrote for an appointment, giving a Bronx address and a changed name. He sent his man for the answer to his letter, had his consultation satisfactorily, and paid for it in full with a $10 note.

And there must be money, of course, to cover the unexpected incidentals. These may mount from a few dollars to half a million and may crop out in a hundred unlooked-for places.

A bachelor was giving a small dinner at home when his servant dropped the tray on which he was carrying a dozen gold-incrusted service plates, and $600 in china had to be replaced. A young laundress, heavy-lidded from a late party, scorched two sheets and a tablecloth, and she might as well have torn into bits three hundred-dollar bank notes.

A few luxury seekers

No wonder that so few on Park Avenue can manage luxuries, with necessities costing what they do. However, there are a few who can, and they give themselves an exceedingly good time.

One woman's indulgence takes the form of fans, and her collection includes several thousand. She has fans of palm leaf, of wood, of leather, of paper, of taffeta, of ivory, of *point à l'aiguille*, of feathers, of mother-of-pearl, of metal, of humming bird, of tortoise, of gauze, of enamel, and of tulle.

There is a map fan from old Japan and a court fan and a war fan. There are lacquered fans, hand-painted fans, damascened fans and cloisonné fans. There is an exquisite, frivolous Marie Antoinette fan amid an uncompromising group of Cubists and Futurists. And in charge of and presiding over them all is a lady who is a handy compendium of fan information.

Another woman's interest is in orchids. On her country estate she has built an East Indian house, a Mexican house, and a cool house to shelter her thousands of plants. She sends men to Africa, to India, to Asia, and to South America to find rare blossoms for her cultivation; and she has just brought two fine specimens from Ecuador which cost her $12,000 apiece.

A young woman collects teapots with amazing success. She buys now with an eye to age, to beauty, and to originality of design, and she pays any price from twenty-five cents for a small pot whose only distinction is a certain niceness of line to $3,000 for a Crown Derby. She has fine examples of English lustered pottery in steel, gold, copper, silver, and resist. She has beautiful agateware and Sèvres and Lowestoft and salt glaze.

Then there are the bibliophiles, and the dog fanciers, and women who have spent twenty years matching pearls.

Park Avenue, for the most part, moves serenely about its business of spending $280,000,000, undisturbing and undisturbed.

LVIII. SOCIAL RESPONSIBILITIES: HOUSING [1]

By Seba Eldrige
Associate Professor of Sociology, University of Kansas

and Carrol D. Clark
Fellow in Sociology, University of Chicago

A newspaper account of housing conditions in one of our medium-sized cities will serve as an introduction to the problems which follow. We are withholding the name of the city in question, as this account may not give a fair picture of conditions there at the present time.

Housing conditions in an American city

Eighteen per cent of the families of X reside in houses for which they pay a rental of less than $10 a month. . . . Add to this 18 per cent the 21 per cent of families who reside in houses for which they pay a rental of from $10 to $15 a month, and the importance of proper housing to the entire community is shown by the numerical scope of the people it immediately affects, nearly 40 per cent of the population of X living in houses that rent for $15 a month and less — the type of house that presents the housing problem in X.

Speaking generally, with not one but hundreds of examples in mind, in so far as physical deficiencies are concerned, the housing problem of X manifests itself in three distinct phases, namely, the house itself, its equipment, and the smallness of the lot upon which it is built. As time goes on, conditions that were at first in no wise satisfactory are made worse by the wearing effects of natural deterioration. About the only differences between an old house of this type and a new one is that the latter is less ramshackle in appearance.

To the house itself, those who have undertaken to provide accommodations for the laboring people have accorded little attention. It is planned as a rule to embrace from three to six rooms, the architectural principle of the "shotgun" house being usually followed. This "shotgun" dwelling is the bane of housing experts throughout the world. It derives its name from the single-barrel appearance created by the succession of rooms, one behind the other, connected by doors that are cut also on a direct line. Sometimes this house appears as a "single-barrel gun." Again, two are attached by a partition wall and made to form two separate apartments, each with its own front and back doors. Entrance to one room is effected only by passage through another, thereby destroying whatever element of privacy a small house may retain.

---

[1] Reprinted by permission from Eldrige and Clark, *Major problems of democracy*, The Century Company, 1928, pages 261–285.

Windows are small and afford no more light than ventilation. Drafts cannot be avoided and in the winter months colds are widely present. The houses are not ceiled and the wall coverings are the cheapest of paper, which becomes the nesting place of myriads of germs as it begins to break and hang down in long, dirty, unsightly folds. Roofs soon begin to leak and are but infrequently properly repaired. The house itself — its construction and appearance — has nothing in common with lofty conceptions of a home. It has none of the picturesqueness of the vine-clad cottage, the log cabin, nor the thatched hut in the dell which the poets have endeared to us in sentimental rhyme. It is a cold-blooded, hard, business proposition that embraces only those things elemental in its renting capacity — walls, windows, roofs, doors. With the formation of an enclosure, its construction ends. There is no evidence of effort to give a homelike appearance. No attempt is shown to please the eye nor to relieve the dull monotony of sameness and plainness. The impression uppermost in the mind of him who views it is that the building was erected upon the theory that the cheaper the construction and the greater the rent that may be collected for occupancy, the better, all told, is the investment. And in dollars and cents this is undoubtedly true; but in social economy it is an ever continuing waste.

Running water in the house is an anomaly in this realm of neglected tenantry, and that laboring man may count himself lucky who has his own private hydrant, though it be remote from the house in some inconvenient corner of the yard. As a rule he has to share his water supply with his neighbor, who, to be sure, is not very far away, and frequently he is merely one of four, and even five, consumers who obtain their water from a common pipe. Some there are who are without water facilities save a flowing well located fifty or a hundred yards away.

Kitchen sinks are another rare specimen of sanitary devices found in workingmen's homes, and the immediate consequence of this deficiency manifests itself in the dishwater and soapsuds that surround the doorstep. Like the Irishman who declined to purchase a trunk to put his clothes in because he refused to appear undressed in public, the typical laborer's house has no need of closets. At least it doesn't have them. Fireplaces are few, screens are a luxury, and sewerage is something virtually unheard of. Surface outhouses are the rule, and one of the most deplorable defects of the whole system is the multiple service they are required to perform. There are frequent instances of four families using one closet — and they have to keep that locked to prevent public intrusion. . . .

Then — the bathtub. Society has a pharisaical antipathy to rubbing elbows on the streets with people of uncouth appearance and unclean clothes. And yet society rarely thinks, as she holds herself aloof, that these people equally understand that cleanliness is next to godliness; that they too realize that soap and water are sanatory agencies contributing to moral as well as to physical health, and that all they ask is an opportunity to apply to themselves the same sanitary regulations and media that are the handmaidens of the élite. Society does not think this, perhaps; and yet it is true. Anyone who has seen a tired mother carrying bucket after bucket of water from an outside hydrant to a large-size dishpan in the kitchen in which to bathe in turn each of her half-dozen children, will not pause to ponder long upon the rational hypothesis that poor people as well as the rich like to be clean. They want to be clean — but they haven't the chance. If one speaks of bathtubs in the houses of laborers, he subjects himself to the supercilious ridicule of those who pretend to expert knowledge of the ways of laborers. "Bathtubs?" someone will smile, indulgently, "Why, what would they do with bathtubs? Store coal in them?" And yet social workers who have spent their lives among the poor emphatically assert that this implication is as unfounded as it is ungenerous. Nevertheless, the idea prevails pretty widely that such would be the use to which many of the laboring people would put their bathtubs were they provided with them by the owners of the houses they occupy. Whatever may be the reason for this inadequacy of equipment, it is a defect in housing common to the workingmen's districts of all cities. In truth a bathtub is a curiosity, if scarcity endows things with curiousness. And this in a country where the temperature is above 80 degrees during half of the year.

The proximity of the houses one to another is one of the most striking blemishes of the system by which the laboring people are sheltered. Two houses on a thirty-foot lot are by no means a rarity. Stretches of small dwellings, separated by no greater distance than a youth can jump — house after house of the same gloomy, depressing type, having the same paucity of equipment and lack of fitness for human habitation — are common enough to excite only trivial comment. Thirty of such structures on one lot hardly large enough to accommodate comfortably one-third the number; others in smaller but no less dejected groups, tucked away from view behind large imposing buildings; single houses, double houses, and detached houses in clusters of twos and threes — of such unattractive scenes there is a plenitude in X, and most of them, if not all, are peopled with human beings who aspire to something better, who yearn for decency, but who lose their opportunity for elevating themselves in the cold, merciless necessity of keeping body and soul together by the blood-sweat of their brows. They want better things. They cannot attain them without help.

And yet another picture. Here is a row of detached houses, fifteen or twenty in number, facing an alley. Less than ten feet of space separates them one from another. Not a modern household convenience is found in the row.

Passing around the structure one is somewhat surprised, perhaps, to find another row of the same type of construction backed up against the first, facing in the opposite direction. Clotheslines run from one house to another, forming a veritable network of wires above the yard. The drying linen from some of the well-to-do homes of X is exposed to the contaminating influences of a yard that defies description. Little outhouses are jammed into the restricted area between the dwellings, emitting nauseating odors, and otherwise evidencing the vilest of sanitary neglect. Indescribable stenches come from vacant houses, the late occupants of which have not yet returned from the cotton fields. . . .

Negroes? Yes, for the most part, negroes live there. But yonder, bending over the washtub amid these physical surroundings, is a white woman, emaciated and worn with the pangs of poverty and the innumerable cares that fall to the lot of "the other half." . . .

And for this she paid $1.50 a week. The house she lived in could be duplicated at a cost of less than $200. Including the value of the lot actually occupied by and assigned to the house, considering insurance, taxes, and all other unavoidable expenses, a generous-minded calculation of the investment and its yield would reveal a revenue pretty close to 25 per cent.

Take another section of the town, typical of such conditions. Here is a row of double "shotgun" houses on lots of thirty feet. They are occupied by the families of white wage-earners whose revenue runs from $10 to $15 a week. Back yards are cluttered with trash. The premises are unsightly. The house is ramshackle — about to tumble down, one involuntarily observes. A double outhouse is seen in the rear, of the unsanitary type. There is a hydrant on the property line. Four families use it for their water supply. The windows are broken and unscreened. The roof shows to the eye its need of repair. The whole situation is repugnant to a refined sense. And for it all two families pay $8 a month — $4 a side. In the same neighborhood are houses of the same type and construction that bring $10 to $15 a family. The sum of $400 would build a vastly superior structure.

These scenes are merely typical of conditions that prevail in those sections of X that are occupied by laboring people. They can be seen without trouble by those who are interested in philanthropic work. They exist — all over town. And the only way to acquire a proper understanding of what the laboring man is actually confronted, bound, and stunted by, is to observe for one's self. Personal inspection of these sections will vindicate the conservatism of these lines.

Extent of unsatisfactory conditions

We do not know how widespread such conditions as these are, as no comprehensive investigation of housing problems in this country has ever been made; but it has been estimated, on the basis of available evidence, that one-third of our population live under unsatisfactory housing conditions, and that 30 per cent of this number, or one-tenth of the total population, live under conditions that menace health, morals, and family life.

Bad housing conditions are not altogether the same in different communities, of course, but practically every community in the land has its share of them, not excluding rural communities. In a large proportion of mining, cotton-mill, and other company-owned towns, where houses as well as jobs are supplied by the employer, conditions are very similar to those in X, though the crowding of houses so close together is not as common in such towns. In New York City, the tall, compactly built tenement house, with poorly lighted rooms, overcrowded apartments, inadequate toilet facilities, excessively high rents, and little or no outdoor space, presents the typical housing problem. While no other city in the country has so much housing of this type, the tenement or apartment house is being built more and more in our urban communities, and is bringing in its train, especially where unregulated by law, diminished family privacy, congested population, unsanitary living accommodations, and restricted play facilities — conditions which it will be difficult if not impossible to correct in years to come.

In many cities "converted single houses," originally occupied by one family each, but since altered to accommodate two or more families, present a serious problem. For the two or more families that occupy a converted house are often obliged to use the same yard, entrance and hallways, bathing and toilet facilities that were originally designed for a single family. The evils of such an arrangement are obvious.

One writer says, in surveying the housing problems of American cities, that "the same conditions meet us everywhere — lot overcrowding and room overcrowding, dark rooms and inadequately lighted rooms, lack of water, lack of sanitary conveniences, dilapidation, excessive fire risks, basement and cellar dwellings. There are differences in emphasis. The besetting sin of Philadelphia may be privy vaults, while that of Boston is dark rooms; New York may have no inhabited alleys and Washington no tall tenements, but none can afford to throw stones."

Some large European cities have razed all the houses in many of their "slum" areas and erected sanitary modern dwellings in their places. Some years ago a study was made of the effect this change had on the health of those living in sections thus improved in the city of Liverpool. In one of these sections about 80 per cent of the tenants in the new dwellings had previously occupied old tenements in the same section. Before the improvement the yearly death rate was between forty and sixty per thousand, of which approximately four per thousand were due to tuberculosis. But after the improvement the death rate dropped more than one-half, and less than two persons per thousand succumbed to tuberculosis. The better housing conditions must be largely credited with this improvement in health.

Marked improvement in cleanliness and in conduct resulted from the same reform, as was shown by the appearance of the houses both inside and out, and by the decreased number of arrests. In one of the improved sections arrests per year dropped from 170 to 82, and in another section from 202 to 2, mainly, it is thought, as a result of the better housing conditions.

Similar examples could be cited in this country. Statistics show that more juvenile delinquency occurs in crowded sections of our large cities than in less congested neighborhoods, and that the number of boys and girls arrested for violating the law decreases in such sections when playgrounds are established. Again, the arrests of children are apt to increase after schools have closed for the summer, except in neighborhoods supplied with playgrounds, where no noticeable increase occurs.

Bad housing conditions lead to wrongdoing of a different kind. As everyone knows, grown-up boys and girls should have different sleeping quarters. But that is often impossible in the overcrowded homes of poor people. Worse than that, the workingman's family must often take lodgers to help meet expenses, who may, because of crowded conditions, live in close contact with members of the family. This tends to break down the modesty of both men and women and lead to immorality. One writer has said, in view of these conditions, that there is perhaps no greater housing problem in this country than the "lodger evil." Moreover, the best sort of family life is possible, as a rule, only when a single family occupies the same house or apartment.

In causing disease and ill health, poor housing diminishes working efficiency. Moreover, where cities are poorly planned, people spend more time going to and from work than they would if dwelling houses and work places were properly located. Not only is working efficiency diminished in these two ways by unsatisfactory housing conditions, but lowered morale due to the same conditions must have a similar effect. Instances are known where removal to better living quarters has been followed by an increase in earning power. Some years ago in Cleveland twenty families had to vacate miserable shacks because these had been condemned by the local board of health as unfit for habitation. All of them claimed that they could not afford higher rents; and the associated charities, in the hope of improving their condition, offered to assist them in paying rent for better quarters. By the time a year had elapsed none of these families required any assistance in the payment of rent, although every one of them was paying more than twice the rent it paid before, except one family which had acquired a new and comfortable home of its own. Better housing had been accompanied by increased earning power.

What has been said so far applies chiefly to housing conditions in towns and cities. But most rural communities also have serious housing problems. Anyone who has observed farm dwellings from an automobile or railway car must have been struck by the dilapidated and unkempt appearance of many of them. One naturally infers that the interiors of these houses correspond to their exteriors. This inference is amply supported by the facts.

Only a small percentage of farmhouses are as sanitary, comfortable and convenient as the majority of houses in a typical American town. Few farmhouses have bathrooms or even running water. Outdoor privies of a very unsanitary type often pollute wells and offer prolific breeding places for flies. Stables are quite commonly placed near the house, with similar effects. Doors and windows are often unscreened against flies, mosquitoes, and other insects. Lighting and heating systems are commonly of a primitive sort, kerosene lamps and stoves or open fireplaces being the rule. Then there are dingy interiors, unpainted exteriors, and unkempt yards by the millions in our rural sections. These conditions are usually worse in the case of farm tenants than of owners. Naturally, there is no congestion of population in the country, so far as housing conditions are concerned, but there is a lot of overcrowding within farmhouses and particularly tenant houses. And the pure air of which country people boast is often religiously excluded from the farmhouse itself, especially from sleeping rooms, partly because night air is thought to be "sickly."

Causes of unsatisfactory housing

The student will find it helpful, in considering this topic, to study both satisfactory and unsatisfactory conditions in his own community. How did the unsatisfactory conditions arise? And why are they not corrected? Some owners have their houses repaired or remodeled quite promptly, when the need arises. Why is not this done by all owners? Again, why do so many families rent and not own their houses? And what determines the rents charged for housing accommodations?

Answers to the foregoing questions are not the same in all communities. We can accordingly only point out factors involved in varying conditions, leaving it for the student to consider these questions in connection with housing conditions of his own community.

Oftentimes the owner of a house thinks he cannot afford repairs or improvements which he would like to make. If he occupies the house himself, he may think, as is frequently the case, that all his income is required for food and clothing for the family, education for the children, and other necessities. If the house is rented to others, it may not pay him to make needed repairs and alterations. The added rent which could be charged for the house if improved might not bring him a "fair" return on the money invested in the improvements. He might find that the same sum of money invested elsewhere would yield greater returns. And poor houses can usually be rented, because many people either cannot afford better ones, or prefer to live in poor ones in order to have more money for a car, clothes, or something else that is prized more highly than living in a decent house.

House rents are commonly, though not always, fixed in such a way as to yield the prevailing commercial rate of interest on the money invested in the property, plus the cost of upkeep, including insurance, depreciation, taxes, and special assessments.

All these items depend on other things. The amount of money invested is controlled mainly by the price of lots, the cost of building materials, the wages of labor, and the profits of contractors. Taxes and special assessments depend on the scope and efficiency of the services undertaken by governmental agencies, the cost of street improvements assessed against the benefited property, and the like. Depreciation in the value of property depends on the deterioration of houses, so far as this is not checked by repairs and improvements, and on changes in the character of the neighborhood affecting the value of real estate. A house and lot often increase in value, however, owing to growth of the community or to improvement of the neighborhood as a place of residence.

The factors just discussed normally determine rents. But it often happens that rents are greatly increased because of a housing shortage. This is the reason why renters in most American cities had to pay unusually high rents during and after the war. In a city of considerable size, poor transit facilities have much the same effect, for in that case a greater number of people will want to live near their work, and as a result the demand for houses near the business and industrial districts is likely to exceed the supply. The same condition, when combined with concentration of business and industrial enterprises on too small an area, leads to congestion of population around that area and the erection of tall tenement or apartment houses to supply the demand for dwellings. Unless these conditions are regulated by the community, they not only result in high rents, but also in the building of houses too close together and, consequently, in inadequate lighting and ventilation. High rents and insufficient housing accommodations also lead to overcrowding within houses or apartments.

People rent dwelling houses for a variety of reasons. Some people prefer to rent, either because ownership of a home would limit their freedom to accept business or professional opportunities elsewhere, or because they think it more desirable to put their savings in bonds, life insurance, or some other form of protection for the future. A great many do not buy houses because they are not sure of continued employment in the same community. But perhaps the great majority of renters in our cities do not own their homes because they are financially unable to do so. Most of this group are wage-earners whose earnings are so small that the purchase of a house is out of the question. The price of houses, the outlay of cash necessary to acquire possession of one, and the interest charged for loans secured by mortgages on real estate put home ownership beyond the reach of this class.

One finds a somewhat different set of factors at work in the country. Many farm owners are not sufficiently prosperous to acquire and maintain satisfactory dwelling houses. Others can afford such houses, but have not been educated to the point of desiring them, preferring instead to put their money into land, barns, or other investments. Comparatively few farm landlords realize their responsibility for properly housing their tenants, and tenants themselves have not as a rule been educated to desire really good homes. Moreover, tenants cannot themselves afford to make improvements in houses they occupy, when landlords refuse to do so, because under our laws landlords are not required to reimburse tenants, when they move away, for improvements made by the latter; and tenants in general do not stay on the same farms long enough to get the full benefit of improvements which they undertake at their own expense. Of course, taxes, prices of building materials, wages of carpenters, and other items in building costs affect housing conditions in the country as in the city. Such factors as transit facilities, land values, and scarcity of houses, on the other hand, have little or no influence on rural housing conditions.

Remedies for unsatisfactory conditions

What is the solution of housing problems such as exist in most local communities? How can the causes of unsatisfactory conditions be abolished? Or, when that is impossible, what can be done to counteract them and thus avoid the development of similar conditions in the future?

One approach to the solution of these as of most other problems is education. Most people can be educated to desire decent dwellings, and hence to buy or rent such dwellings if they are financially able. Very likely a few people cannot be thus influenced by education, and for them a different procedure will be necessary. Education has also often helped landlords, real-estate dealers, and building contractors to realize more clearly their responsibility for the provision of safe, sanitary, and convenient dwelling houses. Moreover, education is the means of creating and sustaining public opinion that demands healthful houses for those who must rent from others.

But many who rent houses to other people cannot be effectively controlled by educational methods. Some of them think of their own pocketbooks, say "business is business," and never give a thought to the human side of their business. The development of an influential public opinion on this as on other social problems is a tedious, difficult, and sometimes impracticable undertaking, and, even so, it does not influence very much the business-is-business type of real-estate operator. Nevertheless, education and public opinion prepare the way for another method, one calculated to reach those not responsive to educational efforts as such. This is regulation by law.

The law as applied to this problem lays down certain rules — such as will be discussed presently — which owners must follow in the maintenance of houses, in the erection of new houses, and in the repair or alteration of old ones. Adequate laws provide, of course, for their own enforcement, as no law ever enforces itself. Enforcement includes (1) inspection of houses coming within the provisions of the law; (2) submission to the proper officials of designs or plans for new houses or the alteration of old ones, to determine whether they are in conformity with the law; and (3) the trial of persons charged with violation of the law, and their punishment when found guilty.

Where a community adopts this method of housing reform, the standards of housing included in the law must be carefully formulated. If these are too low, then the law will not touch some housing evils it might otherwise correct; while if too high, it will add unduly to the cost of building, and hence to both the rent and the price of houses. Also, the provisions for enforcement of a law must be drafted very carefully, for otherwise the law will be unenforceable. Care must be exercised lest provisions of the law conflict with the state constitution and prove to be unenforceable on that account.

A model housing law

Fortunately, those interested in housing legislation have an excellent guide in *A model housing law* worked out by Mr. Lawrence Veiller and published in a book bearing that title. This book presents the draft of a housing law, which, as the title suggests, is intended as a model for legislative bodies to follow in the enactment of such laws.

Mr. Veiller prepared this model law in the light of extended experience as a housing reformer, including participation in the campaign for housing reform in New York City which resulted in the Tenement House Act of 1901 passed by the New York state legislature. Mr. Veiller has also studied housing conditions and housing legislation the country over, and his model law is so formulated as to furnish a pattern for legislation anywhere on this matter. No other law which might serve as a model is backed by so much practical experience as this one, and for that reason any state or city considering the enactment of housing legislation would do well to pattern after it. This does not mean, of course, that this or any other model law should be followed blindly. Indeed, Mr. Veiller's book shows in detail how the model law can and should be adapted to the various circumstances under which it may be applied.

This model law is intended only for cities of ten thousand inhabitants or more, though in some states housing legislation, to be constitutional, must apply alike to all their cities. Limitation of the law to cities of this size does not mean that smaller communities have no need of housing legislation. Smaller communities need a somewhat different type of law, but a model law for them has not yet been worked out.

Mr. Veiller and housing experts generally believe greater progress in housing legislation can be secured by working for state laws than for city ordinances. It takes less time and expense to put through a satisfactory state law applying to all cities or cities of a specified size in the given state than to secure separate ordinances in each of those cities. Moreover, a single state law is easier and less expensive to enforce than a number of separate ordinances. For these reasons the model law is offered as a pattern for state legislation. This does not, of course, mean that progressive cities, if authorized by the state, should not enact housing ordinances for themselves.

Housing experts also strongly recommend that state laws be mandatory, not permissive, in character. The enforcement of a mandatory law is obligatory, that of a permissive law optional, on the part of the cities concerned. The enforcement of housing laws is usually left to local officials, though some supervision by state authorities is necessary.

The model law, together with Mr. Veiller's explanations of it, fills a book of over four hundred pages. We cannot here summarize this book, but may present some significant provisions of the law to show what it is like. The law applies to all dwelling houses, but its provisions are somewhat differentiated for three classes of dwellings distinguished in the law. These classes are:

(1) single-family dwellings;
(2) two-family dwellings;
(3) multiple dwellings occupied by more than two families, these subdivided into
  a. dwellings occupied more or less permanently, such as tenement or apartment houses;
  b. dwellings not, as a rule, occupied permanently, such as hotels, clubs, and lodging houses.

Provisions for dwellings erected after the enactment of a law differ from those for dwellings already in existence. These two classes of dwellings are designated as new and old dwellings, respectively.

Some of the provisions concerning lighting, ventilation, and privacy are as follows:

1. The proportion of a lot which a dwelling may occupy varies from 40 to 90 per cent, depending on conditions specified in the law.

2. No new dwelling house may exceed in height the width of the widest street on which it abuts, nor may it in any case be more than eighty feet in height.

3. Each house must have a rear yard of minimum dimensions specified in the law, these varying with the height of the house and other conditions. Minimum dimensions for inside courts are also specified.

4. Every room in new dwellings must have one or more windows opening to the outer air, and so placed as to give adequate light. The area of the window or windows in any such room must be at least one-seventh the floor area of the room.

5. In new dwellings every room except water-closets and bathrooms must have at least ninety square feet of floor area, while each apartment in new multiple dwellings used for permanent residence must have at least one room with a floor area of not less than 150 square feet. Rooms in single- and two-family houses must be at least eight feet from the floor to the ceiling, and the rooms in multiple dwellings at least nine feet.

6. In all new dwellings, entrance to every living room, bedroom, and at least one water-closet without passing through a bedroom must be provided.

7. A bathroom or water-closet must have a window area of not less than six square feet, and at least one window opening to the outer air.

The provisions on sanitation prohibit the occupancy of cellars and basements which are not adequately drained, lighted, and ventilated. All new dwellings must have a cellar, basement, or open space underneath to insure ventilation and protection from dampness. Every new private dwelling or apartment used for permanent residence must have a separate water-closet, and a sink or washbowl with running water, except in cases where water mains are inaccessible.

The provisions for fire protection require that all dwellings over three stories in height be fire-resistive, or "fire-proof," to use the more common term. This not only affords protection against fire but discourages the erection of tall apartment houses and thus helps to prevent lot overcrowding. Every multiple dwelling must have at least two ways of escape in case of fire, placed as far apart as possible. The erection of wooden multiple dwellings intended for permanent residence is prohibited.

An important section of the model law lays down rules for the alteration of old houses where these fall below the standards specified for such houses. Such standards were made lower than those applicable to new houses, because it was thought unjust to require the owners of houses already in existence to bring these up to the standards laid down for new houses.

The maintenance provisions of the model law require that all public halls be lighted day and night; that all dwellings be kept clean and in proper repair; that receptacles for ashes, garbage, and rubbish be provided; that fire escapes be kept in repair and free from obstructions; that in sleeping rooms at least six hundred cubic feet of air space for each adult and four hundred cubic feet for each child be allowed; that lodgers be not taken by families in multiple dwellings, or be taken only when authorized by special permits, and so on.

Public opinion favorable to housing legislation is almost nonexistent in the small town and rural community, and will probably be rather difficult to create and develop in the future, when the attempt is made. Although it seems likely that the main reliance for housing betterment, in country communities particularly, must lie in a slow process of education, the desirability of legislation should not be forgotten.

One writer on the subject apparently assumes that the more urgent legislation is possible in the immediate future. He says "the country householder, landlord or owner, should be compelled by law to provide the minimum essentials of decent and healthful living: well-lighted rooms of reasonable size, privacy, freedom from overcrowding, protection against fire, and proper sanitary conveniences inside the house wherever possible; or, if they must be out-of-doors, then so constructed as to safeguard the health of the community." This writer thinks that the construction and care of cesspools and outdoor privies, in particular, should be strictly regulated by law, because of their menace to the health of everyone in the community. The state should be responsible for the enforcement of these particular regulations, he believes, for the reason that "the enforcement of sanitary laws upon one's friends and neighbors is a thankless and unpopular duty, and it cannot be expected that it will be done efficiently."

Opposition to housing legislation

Adequate housing legislation is by no means easily secured. Real-estate interests generally oppose it, as it limits their freedom and may to some extent reduce their profits. The right way of meeting this opposition is to draft proposed housing legislation in such a manner that it will interfere as little as possible with legitimate real-estate interests and then cultivate a public sentiment in behalf of the legislation that shall overcome such opposition.

The individual householder also frequently opposes housing legislation because it limits his freedom to plan, construct and alter his dwelling. It should be possible, however, to convince him that such regulation is necessary for the welfare of the community, and that restrictions placed on him and others by such legislation will be a benefit, even if somewhat burdensome.

Housing problems not solved by a model law

It might seem that once a good housing law was enacted and put into effect, housing problems would practically disappear. But this is far from being the case. Such a law does not touch the problem of high rents. Some states enacted emergency rent laws when the housing shortage became acute a few years ago, restraining landlords from increasing rents to their tenants unless conclusive evidence could be produced in justification of such increase; but with the gradual disappearance of the housing shortage, these laws were allowed to lapse.

Nor does housing legislation of the type discussed assist people with small incomes to acquire homes of their own, however much they may wish to do so. In fact, housing legislation of this sort makes these two problems more instead of less difficult. For, as can readily be seen, houses erected according to higher standards, as larger rooms, better fire protection and the like, cost more than houses of a lower standard; and people who rent or buy such houses will necessarily have to pay more rent or a higher price for them. Indeed, the enactment of a housing law embodying really satisfactory standards usually makes the housing problem of people with very small incomes more difficult than before. The same amount of rent will pay for less room in houses built according to the higher standards, and those who cannot afford to pay more rent may be forced to live in more over-crowded conditions than before. Sometimes, of course, people with small incomes will pay the higher rent to get the same amount of room as before, but spend less, and less than they should, on food, clothing, and other necessities. More frequently, perhaps, the lowest income group, unskilled wage-earners in particular, will continue to rent quarters in old houses. These may be improved in conformity with provisions of the law applying to this class of houses, but their condition is unsatisfactory at best, and generally it deteriorates. Escape from this situation by way of home ownership is made more difficult on account of the higher and more expensive standards of construction prescribed by the same legislation.

Taxation and housing problems

Nor does the ordinary housing law deal with taxation as a factor in housing conditions. In this country, houses and building sites are taxed at the same rate. This system of taxation tends to discourage improvements in all classes of buildings. For the erection of a better house in place of an old one or the improvement of the old one itself adds to the owner's tax bill. Home owners with small incomes will therefore often feel unable to afford at the same time the expense of needed improvements and the increase in the tax bill due to these improvements. Also, as already pointed out, landlords often decide against improvements in houses which they rent, because the increase in rent which could be charged would not bring a return on the money equal to that obtained by its investment elsewhere, plus the increase in the tax bill and other expenses.

Because of these facts, many people advocate a reform in the tax system placing all the real-estate tax, or a larger share of it, on the value of the lot, and a smaller share or none at all on the value of the building. This tends to encourage improvements in dwelling houses as well as other buildings. It also discourages the holding of vacant lots in a city, because under this system owners of such lots are obliged to pay higher taxes than under the old system, since all or most of the real-estate tax is then levied on land; and, as a result, it becomes less profitable to hold vacant lots for an increase in value, the main motive for this practice. Thus the supply of houses is increased to some extent, and this tends to relieve overcrowding. It also operates as a check on rent increases, since there is more competition for tenants. Pittsburgh adopted this plan some years ago and, it is reported, with excellent results.

The present real-estate tax also affects rents and the upkeep of a house, as has been pointed out. The student can easily figure out the effects of this tax in his own community by multiplying the assessed valuations of various residential properties by the tax rate on real estate. This gives the real-estate tax. He can readily see how a reduction or an increase in this tax rate would affect the expenses of house owners. The tax on a rented house is normally passed on to the tenant in the rent bill, since the owner of such property fixes the rent in such a way as to bring a fair return on the money invested, plus the taxes on the property together with the costs of upkeep. The way to keep down the tax rate on real estate is to work for honest and efficient government. If the government spends the public revenue economically, less will be needed for the same amount of service than were it extravagant.

Street improvements, such as paving and the laying of water mains, are generally financed in part through special assessments levied by the community on the owners of benefited property. Expenses of property owners on this account can be kept down if the improvements are economically planned and executed.

Finally, taxation of mortgages on real estate adds to the difficulties of home ownership in a great many cases. Where this tax prevails, mortgaged property is taxed twice, since the owner pays a tax on his property, and at the same time the holder of the mortgage pays a tax on that part of the property value which is covered by the mortgage. The mortgage tax is paid in effect by the owner of the property, as people loaning money on mortgages where these are taxed charge a rate of interest high enough to earn a fair return on the money in addition to the mortgage tax. Purchasers of homes who cannot pay entirely in cash suffer most from such a tax. Some states are now taking steps to abolish this evil.

Land values and the housing problem

Another factor in housing not touched by a housing law is the cost of land. This is by far the largest item in the cost of housing in the larger cities, and a very considerable item in nearly all urban communities.

A number of factors enter into the cost of land. One is the scarcity of building sites compared with the demand. Land in the larger cities is at a premium because, relatively speaking, there is so little of it. Growth of population therefore increases the value of building sites. Land may be limited, in effect, by inadequate transportation facilities that make it impracticable for people to live at any considerable distance from their work, thus putting a premium on sites for dwelling houses near business and industrial districts. Land values are also increased by the development of parks, boulevards, schools, libraries, health agencies, and other improvements, because these enhance the desirability of certain neighborhoods or of the city as a whole, thus increasing the demand for housing accommodations and hence for building sites.

Note that this increase in the value of land is not due to the efforts or activities of its owners, but to community developments, including some undesirable ones, such as congestion of population.[1] Under present conditions the owners of land reap the profits from increased land values, in the form of higher rent when leasing, or higher prices when selling, their properties. This is one of the reasons why ownership or occupancy of satisfactory homes is beyond the reach of people with small incomes.

Various measures for dealing with this problem have been advocated. One is a proposed tax on "unearned increments," or increases in land values due to community developments and not to efforts of the landowner. By such a tax a city appropriates a share of the increase in the value of a lot when it changes hands, or at periodic intervals, in the absence of purchase and sale. It is claimed that this measure tends to check artificial increases in land values due to the speculative buying and selling of real estate, by making such speculation less profitable; and that, in addition, it provides needed public revenue. While a tax of this nature may check increases in land values to some extent, it is doubtful if it comes anywhere near eliminating them altogether, since the main cause of increase in land values is the greater demand for land that accompanies the growth of population and other community developments.

Under another system, which has been tried out with marked success in some places, a group of householders (sometimes termed a copartnership society) acquires all the land of a certain area, erects dwellings, stores, and factory buildings on it, and holds all this property in common. Any increase in land values then goes not to any individual but to the community as a whole. Individuals hold shares of stock in the enterprise, and when they move away these are sold back to the community which in turn resells them to other individuals who wish to become householders in the community.

Still another method of controlling land values is for the local government to buy up large tracts of land in undeveloped sections of the city, sell this in the form of lots to individuals desiring to build residences for their own occupancy, and at the same time reserve the right to buy back the property at a fair valuation from those wishing to sell, and thus be able to sell it to other householders at a reasonable price. This clearly gives the community the right to limit increases in land value.

---

[1] Such increases of land values in two steel towns, Lackawanna, New York, and Gary, Indiana, have been estimated at $6,788,900 and $22,358,900, respectively. — A. E. Wood, *Community problems*, page 88.

Reduction of building costs

Experts agree that building costs are much greater than they need be. This adds to the cost of dwellings, makes rents unnecessarily high, and helps to put decent houses, either for purchase or for rent, beyond the reach of people with small incomes.

One item in excessive building costs is the high wages paid to carpenters, bricklayers, and others engaged in the building trades, owing largely to the seasonal character of their work, and the power of the unions to enforce the wage scales necessitated by this fact. Better planning of building operations by owners and contractors, such, for example, as making repairs and doing inside work in the winter months when possible, would at least partially solve this problem.

Another factor in high building costs is failure to standardize building materials. "If we examine the conditions under which housing is constructed," says a recent writer, "we find that instead of having a machine or set of machines producing the exact number of bricks, of tile, of gallons of paint, of square feet of sheet metal, of the exact type and quality required, we have anywhere from two to two hundred individual plants making each of these and the other parts of buildings, and each trying to convince the assembler of the house that his particular product is best." The result is that "millions of dollars are spent annually in selling building materials. As an average, not less than twenty-five cents in every dollar the consumer pays for building material goes to meet the cost of selling him." It is estimated that, due to these and other wastes of competition, "we are paying 100 per cent more for building materials than we need to."

An important step toward the elimination of waste in the sale and manufacture of building materials is to standardize dimensions and qualities. If this were done, competition between producers of building materials would be solely on the basis of price, and selling expenses would be largely eliminated. Other costs could also be greatly reduced by this means, as large-scale production would then be feasible, and a far larger portion of the work involved in house construction could be done in the factory than at present. Standardization and large-scale production are now illustrated in the manufacture of portable houses.

Building codes often add unnecessarily to the cost of house construction by requiring an excessive margin of safety in walls, roofs, and flooring; or by forbidding the use of relatively cheap materials, such as hollow tile, which are perfectly safe, if good qualities are insisted on. Moreover, the lack of uniformity in building codes makes the standardization of building materials difficult, and to some extent impossible.

Finally, exhaustion of the timber supply in many parts of the country has made it necessary for dealers in those sections to order lumber from distant regions, and pay heavy transportation charges, which must of course be included in the price paid by the user of lumber. Moreover, the country's timber supply is being rapidly depleted through wasteful logging methods, and failure to provide adequately for replenishment of the supply by scientific forestry, and this is certain to result in increasing scarcity and rising prices of lumber in the years to come.

The cost of money

Perhaps the relatively high rate of interest on loans for building purposes and the high rate of earnings on money invested in houses for rent constitute the most important single factor in the problem of reducing the price and rent of dwelling houses. These rates vary from one part of the country to another, and even within the same community, but they usually come somewhere between 6 and 12 per cent. The renter of a house pays the landlord for the use of his property, which payment, from the landlord's standpoint, represents a certain rate of earnings on his investment; and one who buys a house in whole or in part with borrowed money must pay thereon the rate of interest charged for such loans.

In addition, the tenant's rent must include the upkeep of the property, and a home owner must bear directly the upkeep of his house. It has been estimated that the upkeep of a dwelling, including taxes, insurance, repairs, and replacements — but not including interest charges — averages, roughly speaking, about 4 per cent annually on the money invested in the dwelling.

A little figuring will show us how the problem of reducing the rent and price of dwellings is affected by these three factors: (1) rate of interest on building loans; (2) rate of earnings on landlords' investments in dwelling houses; and (3) upkeep of dwellings, whether owned or rented by the occupants. Take the case of a house (or an apartment) rented to a laboring man and costing, say, $4,000. The rent will necessarily include 4 per cent of $4,000, or $160 a year, for upkeep. If the rate of earnings on the landlord's investment is 6 per cent, the rent will include that percentage of $4,000, or $240 a year, giving a total rent of $400. If the rate of earnings on the investment is higher or lower than 6 per cent, then the rent will be greater or less than $400, as the case may be.

If the laborer buys a house for $4,000, and has to borrow, say, $3,000 on mortgage in order to pay for it, his interest payment at 6 per cent will be $180 a year, and the cost of upkeep will be 4 per cent on $4,000, or $160 a year, giving a total of $340 for the year. Of course, as payments are made on the principal, the interest charges will be reduced, but these payments will themselves be heavy, especially if the loan is made for a short period of time.

This case is hypothetical, and used for purposes of illustration only. The student can figure out for himself actual cases in his own community. Now, the point is this: the great majority of wage-earners in the United States cannot, because of low earnings, either rent or buy decent homes under these conditions. They could not do so even if building costs were reduced to a minimum and tax laws amended so as to reduce the overhead charges involved in home ownership.

Many people believe that we should make it financially possible for everyone to own his home, in case he wishes to do so; and also possible for those who rent for other than financial reasons, to secure decent homes at rents they can afford. Apparently this can be done only if much cheaper money is made available for housing purposes. Let the student figure out the reduction of rent or interest payments in the example given above, by assuming a rate of interest at 5, 4, 3, or 2 per cent, and he will at once realize the force of this contention.

Sources of low-interest money

Many experiments have been tried in the way of securing cheap money to provide decent dwellings for people with small incomes. In a number of instances, persons of large means have formed companies for the erection of model tenements, limited the dividends on the money invested to 4 or 4.5 per cent, and rented apartments to workingmen at rates they could afford. Such enterprises are praiseworthy, but not enough money can be gotten in this way to supply more than a small fraction of the better housing that is needed. Employers have sometimes provided good houses for their employees at a low rental, or sold houses to employees on easy terms of payment. Some housing experts believe that in this way the needs of workingmen for decent housing at prices or rents within their means can be largely supplied. But the indications are that this plan is practicable only under special circumstances, and not as a general solution of the problem. Moreover, it would seem to make the wage-earner too dependent on his employer, though company housing, as in mining or cotton-mill towns, is sometimes a necessity.

The limited results of these experiments have forced many housing experts to the conclusion that only through governmental action can a sufficient amount of money for housing at low interest rates be provided. A number of European countries — notably Belgium, Germany, and Great Britain — accepted this conclusion many years ago, and their governments have since financed housing projects on a large scale. Many assert that we must eventually pursue a similar policy, and tentative experiments in that direction have recently been made in California, Massachusetts, Minnesota, North Dakota, Oklahoma, and South Dakota; and New York State is seriously considering the adoption of such a policy.

Governments can borrow money at lower rates than can private individuals, and in that fact lies the possibility of securing an adequate amount of money for housing projects at low interest rates. Postal savings deposits, upon which a low rate of interest is paid, could be used for the same purpose. The Federal government might set aside funds for housing projects from tariff revenues or inheritance taxes, without paying any interest on them, and state governments might provide similar funds from sources at their command. This would make it possible to reduce the interest charges on loans from such funds to the very low rate required to cover administrative expenses only. Or the state governments could, by setting up suitable banking institutions, loan the public credit for housing purposes, in just the same way as the ordinary banks make loans for commercial purposes. The rate of interest on housing loans could be greatly reduced in some one or more of these ways. Very large funds would not be necessary, as loans would all be paid back gradually and utilized repeatedly for the same purpose.

Funds so provided could be allotted to local governments for projects designed to supply houses for sale or rent on a cost basis, or to non-profit making associations, such as chambers of commerce, copartnership societies, or building and loan associations, that wished to construct dwellings for sale or rent, or for the occupancy of their own members. And arrangements could be made whereby a workingman could borrow money on his own account for the purchase or construction of a home, without the supervision of the municipality or a private association. All these plans have worked successfully in various European countries, and, so far as one can see, should prove practicable in this country.

Most of what has been said since we left the model housing law applies to rural communities as well as to cities. High land values do not affect housing problems in the country, but taxation, building costs, and present interest rates do. The problem of building costs is much the same in the country as in the city, though labor costs are, as a rule, not so high. The Federal Farm Loan System has made a beginning on the problem of providing loans to farmers at low rates of interest, but the problem is far from being solved.

LIX. SOCIAL RESPONSIBILITIES: HEALTH

1. PUBLIC WELFARE AND PUBLIC HEALTH[1]

By George E. Vincent

President, the Rockefeller Foundation

To amplify Gladstone's assertion that "the health of the people is the foundation on which repose the power and happiness of any country" is to elaborate the obvious. The physical and mental energy of a community or a nation are fundamental factors in welfare. The history of civilization is being reinterpreted in terms of health and disease. We are told that the decadence of Greece and Rome was not due primarily to moral decay but to malaria. Social progress itself is traced to a surplus of physical well-being. Hundreds of villages and countrysides in our southern states, during the past ten years, have been transformed economically and socially by the elimination of hookworm disease. In any programme of public welfare the prevention of disease and the fostering of health deserve first consideration.

Ever since men have reflected about the common life, they have given thought to the protection of health. The Egyptians filtered the muddy water of the Nile; they enforced regulations concerning bathing, clothing, diet, and the care of infants. The Chinese centuries ago used alum to clarify water. Aristotle advocated a pure water supply. The Hebrew sanitary code was detailed and practical. Solon and Lycurgus insisted upon consideration for the health of the masses. The Romans gave heed to ventilation, drainage, cremation, and public baths. The Middle Ages suffered tragically from ignorance of sanitation. The modern health movement began in England about a century ago. The first General Health Act was passed in 1848. In the United States the first state board of health was established fifty-three years ago in Massachusetts. Scientific and efficient methods of combating disease and promoting health are developments of recent times and are at present undergoing rapid evolution.

---

[1] Reprinted from the *Annals* of the American Academy of Political and Social Science, Vol. CV, January, 1923, pages 36–41.

Modern preventive medicine

Modern preventive medicine has passed through two stages and has entered upon a third. At first, disease was seen chiefly in the environment. Stress was laid upon the "filth" theory. Effort was directed to sanitation, to improved water supplies, to sewage and refuse disposal, and to abatement of nuisances. In the second stage, attention was centered upon infectious diseases. Bacteria in individuals were recognized as a menace. Inspection, compulsory reporting of contagious disease, and quarantine were resorted to. The diagnostic laboratory became the center for the identification of disease, and later for the preparation of antitoxins, vaccines, and sera. The third stage recognizes the importance of personal hygiene. A large majority of the diseases which contribute to the death rate cannot be controlled by public authorities. These maladies can be avoided or minimized only by the intelligent self-control of the individual. Hence the demand for education in public health, the agitation for periodic medical examinations of all citizens, the call for physicians who will be counselors for health rather than curers of disease.

The progress of modern preventive medicine has revealed a gradual changing of ideals and shifting of emphasis. Even if Pasteur's faith that "it is within the power of man to banish the infectious diseases from the world" were vindicated, the result would be negative rather than positive. Health in the individual and the community will be thought of less and less as absence of weakness and pain, more and more as a sense of vigorous well-being and abounding energy. The health department of the future will not regard itself as a disease department; its goal will be not only life, but life more abundantly.

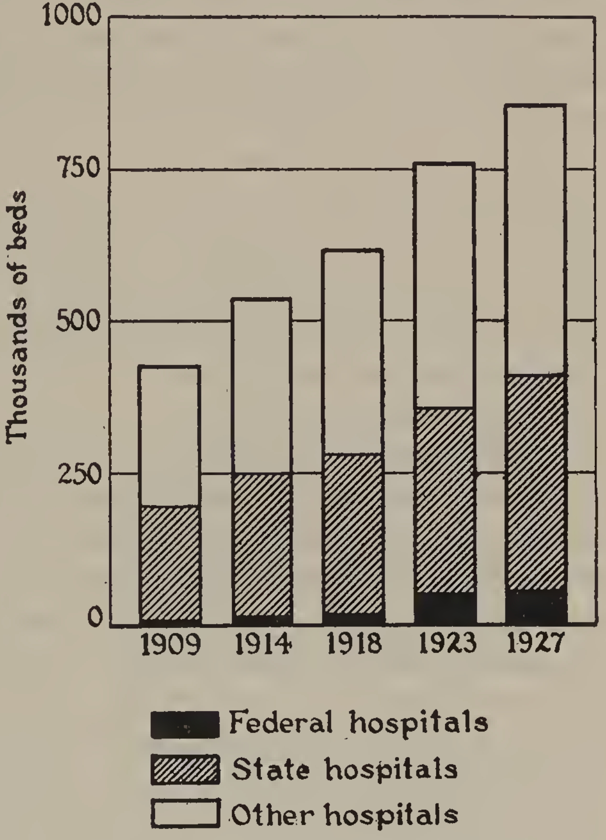
Public health progress is conditioned by the state of scientific knowledge. The achievements of the last half century are directly traceable to significant discoveries, especially in the field of bacteriology. Since 1879, distinguished investigators have isolated the germs of leprosy, pneumonia, typhoid, malaria, tuberculosis, tetanus, dysentery, plague, diphtheria, and yellow fever. Some of the investigators were individual workers. Others were members of institutes of research which have in recent years been established in many countries of the world. Among the most important of these are the Pasteur Institute, the Rockefeller Institute for Medical Research, the London School of Tropical Medicine, the McCormick Institute of Infectious Diseases, the Carnegie Institute of Washington, and the Morris Memorial Institute of Chicago.

The practical application of this scientific knowledge has been successful in many countries. Striking examples of sanitary statesmanship are the campaigns against malaria and yellow fever by Ross in India; Grassi, Bignami, and Bastianelli in Italy; Finlay and Gorgas in Cuba; and Gorgas in Panama. The less conspicuous activities of cities, states, and nations in protecting community health have in the aggregate produced momentous results. Death rates in the leading countries of the world have been lowered during the last twenty years in a dramatic way. Since 1900, the general death rate in Great Britain has fallen from 18.2 per thousand to 12.1 in 1921. In the registration area of the United States the decline during the same period has been from 17.6 to 11.7. Infant mortality may be regarded as the best test of the general hygienic condition of a people. In twenty years in Great Britain the rate has fallen from 154 to 83. In New York City the infant mortality has declined from 273 per thousand births in 1885 to 71 in 1921.

Protection of health a governmental task

The protection and fostering of health are primarily governmental tasks. Only the city, the county, the state, or the nation can exercise the police power and levy the taxes which are essential to successful, efficient administration of health work. Voluntary agencies may support but they cannot replace public authority. Moreover, the international nature of public health calls for the coöperation of governments, which are more and more working together in a common effort to control epidemics, regulate quarantine, standardize biological products and health procedures, and thus gradually create a world health organization.

While governments must assume primary responsibility for preventive medicine, private voluntary agencies play an important part in the modern movement for fostering health. In the United States alone there are more than sixty private associations and societies which seek to promote various phases of public health work. In Great Britain and in continental countries there are similar societies though in smaller number. The National Red Crosses and the International Red Cross with its headquarters at Geneva are giving much attention to health campaigns. Life insurance companies and endowed foundations are also devoting large sums to similar purposes. Demonstrations in the control of a given disease or in the carrying out of a general health programme may be conducted under the joint auspices of a public health department and of a voluntary health society. The education of the public is one of the most useful of the services which private agencies can render. Not only are better hygienic habits encouraged among the people, but public opinion is organized in support of government authorities in carrying out their programmes.



Growth of Hospitals, 1909–1927
Data source: National Bureau of Economic Research, *Recent economic changes*, Vol. I, page 20.

Special training for health officers

Of the chief health officers in seventy-two municipalities and forty-eight states in this country, less than 11 per cent have had special preparation for their work. Administration is for the most part in the hands of physicians who have had no public health training. This does not mean that many of these men are not useful and even efficient. A large number have educated themselves by reading and study and by interpreting their experience. The untrained are tolerated because the public does not understand that the point of view of preventive medicine is very different from that of curative medicine. The M.D. degree is undoubtedly most valuable for a public health officer, but it is not a substitute for public health training. In Great Britain a medical officer of health in a municipality or other health district is not eligible for appointment unless he has the degree of doctor of public health, which requires at least a year of special preparation. In this country it will be some time before it will either be possible or wise to set up this standard. The important thing is to convince the public that public health administration is a special profession for which appropriate training and experience must be provided.

Special centers for the preparation of health officers are being created in various countries. In Great Britain up to the present time the training has been given in connection with medical schools and in schools of tropical medicine in London and Liverpool. It is now proposed to establish an Imperial School of Public Health in London in which a large part of professional education will be concentrated. The School of Hygiene and Public Health of Johns Hopkins University, the Harvard School of Public Health, the training course at Toronto University and the Public Health School at London, Ontario, are the most important centers in North America. The curriculum of such a school as that at Hopkins includes bacteriology, studies of resistance and immunity, animal parasites, parasitic worms, medical entomology, vital statistics, epidemiology, sanitary engineering, human physiology, chemical aspects of hygiene, mental hygiene, nutrition and diet, public health law, personal hygiene, maternity and child hygiene, organization and administration of public health work. In addition to laboratory and lecture courses, students receive practical training and experience in field work under responsible and competent health officers.

In the United States at least, it will be a long time before the professional schools can provide enough graduates to meet the steadily growing demand for public health workers. Dependence will have to be placed for a number of years upon health officers drawn from the ranks of practicing physicians. The problem of giving these men public health training is being met in various ways. Short courses and institutes are being offered. In one state an experiment is being made with correspondence courses in connection with institutes. The visits of expert supervisors play an important part in the education of men and women now in service. A wide range of public health literature is also available for their use.

Public health doctor

Persons officially engaged in health work are not the only ones who need training. Practicing physicians after all play an indispensable part in all public health work. It is they who make the diagnoses; upon them falls the responsibility of reporting contagious diseases and of making out death certificates. One of the chief reasons why vital statistics are so untrustworthy is that so many doctors are not skillful in diagnosis or conscientious in reporting notifiable diseases. The education of doctors is therefore essential to the efficiency of the whole public health organization. Special diagnostic clinics for tuberculosis and other diseases are being organized for practicing physicians. In several states medical extension courses are conducted by the state university extension division.

Trained health workers should function through an efficient type of organization. A military control such as was exercised in Cuba, Panama, and the Philippines is out of the question, except in cases of serious epidemics. The problem in a democracy is to create a public opinion which will insure permanence of tenure, adequate salary, and the best opportunities of service for competent officials. It is generally agreed that the best type of organization is a board of health which appoints the personnel, becomes responsible for appropriations, and gives its appointees support. A full-time staff is assigned to departments, each of which has a well-understood function, but coöperates in unity of effort with the group as a whole. A public health laboratory with facilities for diagnosis and for preparation of antitoxins, vaccines, and sera is an essential part of the organization. The simplest organization, for example that of a county health unit, consists of a health officer, a sanitary inspector, a public health nurse, and a clerk, all on full time.

With the increase in size of the community, such a unit would be increased in number and specialization of staff and in complexity of organization.

Modern public health programme

A comprehensive modern public health programme should, according to Rosenau, embrace the following useful fields of activity: (1) the prevention of the communicable diseases, (2) the prevention of the non-communicable diseases, (3) sanitation, or biologic cleanliness, including an improved environment, (4) vital statistics, or the bookkeeping of humanity, (5) education, or the diffusion of knowledge among the people in regard to sanitation and hygiene, (6) infant welfare and the reduction of infant mortality, (7) the health and development (physical, mental, and moral) of the school child and the adolescent, (8) food and nutrition, the relation of diet to growth and health, (9) industrial hygiene, the health of the worker, (10) personal hygiene, (11) mental hygiene, (12) maternity and the care, protection and encouragement of the function of motherhood, (13) eugenics, the principles of sound breeding and heredity, (14) research to extend the boundaries of knowledge.

Public health purchasable

Dr. Hermann Biggs, Health Commissioner of the State of New York, has asserted that public health is purchasable. The implication is that a community can improve its health conditions to the extent that it is willing to pay the cost. This is an illuminating idea, and contains a great truth. It should be added, however, that the purchasing of public health is subject to the law of diminishing returns. One of the chief problems of public health administration is to secure adequate funds. It is estimated that from fifty cents to one dollar per capita, according to the size of the community, ought to provide a reasonably satisfactory public health service. Some cities have exceeded the one dollar per capita. In two or three private demonstrations of health work the per capita has approached and sometimes exceeded three dollars. In 1917, all the cities of the United States with a population of over thirty thousand, an aggregate of thirty-three million, devoted to public health work only 2.5 per cent of their total public expenditures. In general, it may be said that communities, when convinced that public health pays, have shown a readiness to supply the necessary funds. The International Health Board in the southern states has sometimes found villages and towns anxious to appropriate funds for malaria control sooner than trained officials could be found to spend the money wisely. Too often, however, it is hard to make the average community see the importance of generous appropriations for health protection.

One of the chief obstacles to successful public health work in the United States has been political and corrupt interference with administrative efficiency. Often appointments are limited to local citizens. In many cases interests which are adversely affected by thorough, conscientious public health administration have been able, through political influence, to hamper faithful public servants and sometimes to secure their dismissal from office. While disheartening cases of political intervention still occur in the United States, the tendency on the whole is encouraging. English and continental standards are distinctly higher so far as party politics go. In one sense public health ought not to be taken out of politics. Health protection is a concern of the community in its organized capacity and ought to be regarded as one of the common tasks. The public health officer should welcome an opportunity to educate the people to the support of wise measures for promoting the common welfare. As a public servant, he should understand men as well as microbes and be a politician in the older and better sense of the word.

As has already been seen, personal hygiene must play a predominant part in any public health programme which seeks the welfare of the whole community. Education of the individual thus becomes an outstanding problem. Unfortunately health does not interest the average citizen. He is often bored by talk of health. Excitement and amusement seem to mean more than efficiency. While something can be done to influence mature persons, the chief hope lies in the proper education of the young. Consequently, of late, efforts of all kinds have been made to introduce hygiene into the public schools. Medical inspection of pupils should in itself be a means of education. Great progress has been made in the development of ingenious teaching devices for interesting and influencing children. The attempt is in earlier years to fix sound health habits and later to interpret these intelligently. The public health nurse and the physician, especially the former, are among the most important agents of public health education. So much has been done of late in so great a variety of ways that before proceeding much further it would be wise to make a careful study of the results of the different methods of education which have been employed. This might lead to a considerable revision in the educational programme which is now being carried out.

The social and economic implications of public health ought not to be overlooked. Public health depends not only upon sanitation and the control of contagious diseases, but on nutrition, housing, recreation, mental content and serenity. In this large sense, public health becomes a question of the standard of living, of economic production, and the distribution of wealth. In short, it raises the whole social problem. It is intimately related to the entire field of public welfare. In this wider meaning, it calls for more than the governmental activity of a health department. It demands the coöperation of all welfare agencies, each one of which can make a contribution to public health considered in its social relations.

Much that has been said applied chiefly to towns and cities. The question of rural health has only recently begun to receive the attention that it deserves. While urban health conditions have shown rapid improvement, rural death rates have revealed no corresponding tendency. Relatively, the countryside has lost ground. Typhoid, tuberculosis, hookworm, malaria, rheumatism and other crippling diseases are all too common in rural districts. Country school children show worse defects on the average than city pupils. Only 56 per cent of the 3,027 counties in the United States have hospitals. This situation is oftentimes not so serious as it appears. Good roads have made town and city hospitals more accessible. The problem of medical care causes some apprehension. The motor car has multiplied the availability of doctors, but few young and modernly trained men seem to be settling in the rural districts.

About 210 counties have full-time health departments. It is hoped that this system will gradually spread. The question of cost at once is raised. It is not certain that the average rural community can afford to pay the total expense of the health service which it needs. State and even Federal subsidies are proposed as solutions of the fiscal difficulty. Such aid from central treasuries is advocated on the ground that the entire country is concerned in making life safe and attractive to producers on the farms.

Conclusion

To sum up: Public health is a fundamental condition of public welfare. It is developing a scientific basis and administrative technique of increasing efficiency. The ideal of public health is changing from a negative form of protection to a positive fostering of physical and mental vigor. The conditions of continued progress are: well-trained public officials free from political interference, secure in the tenure of office, adequately paid, commanding sufficient funds, and trusted by an intelligent public. Public education in personal hygiene is an essential condition of improvement in health and of community support for public health programmes. In order that preventive medicine may become efficient in the best sense, it must secure the hearty coöperation of all public and private agencies for welfare. One of the most important tasks in public health work in the United States is the protecting and fostering of health in the rural districts.

2. ACCIDENT PREVENTION AND COMPENSATION[1]

By John B. Andrews

Secretary, American Association for Labor Legislation

Every year in the United States there are about 2,500,000 industrial accidents, of which over 20,000 are fatal. It has been authoritatively estimated that the cost of these accidents in loss of earnings is over a billion dollars.

What this means in terms of family life is suggested in a study made by the United States Bureau of Labor Statistics, covering death cases in three states in 1915. It was found that in Connecticut 71.6 per cent of the men were married; in Pennsylvania 69.8 per cent, and in Ohio, 72.8 per cent. Nearly three-fourths, married men! An earlier investigation in Allegheny County, Pennsylvania, disclosed that of 526 fatalities, 258 were married; 206 had one or more children under sixteen, while 39 of the single men were the sole support of a family. It is significant that more than half of all persons injured in industry are married.

---

[1] Reprinted from the *Annals* of the American Academy of Political and Social Science, Vol. CXXI, September, 1925, pages 1–8.

Men of the age to have growing children are more frequently placed in dangerous jobs than are boys or older men. And in slack times preference for continued employment is commonly given to heads of families. That there is a tragic side to such preferment is seen in the results of the coal mine explosion at Castle Gate, Utah, in March, 1924. The company had closed down one of its mines, laid off practically all of the single men, and placed married men at work in the mine that met with disaster. Of the 172 men killed in this explosion, more than a hundred were heads of families, leaving 105 widows with or without children.

What happened to the stricken family before the advent of workmen's compensation — and what still happens where compensation does not apply — is revealed in several authoritative studies. It was nothing less than calamity.

A survey of 526 death cases in Pennsylvania in 1906–1907, when suits under the common law offered the only redress in that state, showed that nothing but funeral expenses was paid in the cases of 65 per cent of single men leaving dependents; only 30 per cent of the widows received more than five hundred dollars, and 53 per cent of the widows received nothing.

Similar disclosures were made by an official investigating commission in New York in 1907–1908, prior to the adoption of workmen's compensation. Of 115 fatalities, all married men, in Erie County, 78.6 per cent of the families received nothing or less than five hundred dollars, nearly half of this 0–500 group getting nothing. Figures for Manhattan showed similar conditions except that the precentage of families receiving a mere nominal sum or nothing at all was even higher. The commission gathered closed records on 236 fatalities; in 125 nothing was paid except funeral expenses.[1]

---

[1] The distressing results of the earlier common-law procedure are emphasized in the reports of many other state industrial commissions, as well as in the records of numerous public and private case-working agencies. — The Editors.

The New York commission's figures threw some light upon the resulting hardships to the dependents. Of 186 families whose breadwinner had been killed, 93 widows had gone to work; in 9 families children under 16 had been forced to take jobs; 37 families had moved to cheaper living quarters; 10 families were destitute, and 33 were receiving charitable aid.

Similar findings were reported by the United States Bureau of Labor Statistics as a result of a study in Pennsylvania at that time. Despite the earnings of mothers, and charitable aid, the plight of the bereaved families was found to be desperate. Says this report:

> Many of these families were in the most extreme poverty, ill-fed, insufficiently clothed, suffering in the present, and with no prospect of any improvement of conditions in the future. Unfortunately this state of affairs was not confined to those who were receiving public aid. Among others there were some in quite as acute poverty, some in which such straits were escaped only because relatives, but little better off than themselves, had joined forces with the distressed group, and others in which all that stood between the family and utter financial disaster was the health of a woman working herself out in an effort to be at once wage-earner and home-maker for a group of children so young that not for years could she expect any lightening of the burden.

There is another aspect of such distress: its far-reaching social consequences. This Federal report touches on this. It cites the many families, thrown into want, that have no prospect of anything better until the children should become wage-earners. This report goes on to say:

> But the children on whom their hopes depended were growing up under privations that would almost inevitably result in poor physiques and lowered vitality and that would quite inevitably deprive them of any opportunity for becoming skilled, efficient workers. The community may have to pay in part for the father's death in contribution to the children's support; it will pay a heavier price in the injury done to the development of these children, from whom the workers of a few years hence must come.

Child workers menaced by injuries

There is another army of children who enter the picture here — the children who are themselves killed and injured in industrial accidents.

In New York State alone, in a single year, 1919–1920, there were

1,983 compensable accidents to children under eighteen years, 12 of which were fatal. It should be noted that this does not include accidents in agriculture or domestic service, where 22,091 minors under eighteen are employed, nor does it include injuries of less than two weeks' duration. Of the 1,983 cases, 421 resulted in permanent disabilities — handicaps to these young people for the rest of their lives.

Surveys made by the United States Children's Bureau of compensable accidents to minors under twenty-one in Massachusetts, New Jersey, and Wisconsin show in one year a total of 7,478 accidents, of which 38 were fatal, and 920 left permanent injuries. The bureau also found that among eight hundred working children in Boston continuation schools, one child in every twenty had been injured as a direct result of his employment. For a two-year period ending September, 1924, the Indiana industrial board reports 949 accidents to wage-working children sixteen years of age or younger.

Work accidents to children call for special consideration. The inhumanity of child labor and its permanently evil effects upon the victim and hence upon society are aggravated when there is added the crippling result of an injury. With his chances of getting a job lessened, his permanent earning capacity reduced and, particularly in the case of disfiguring injuries, his likelihood of marriage more remote, the broken youth with his whole life ahead of him is faced with grim obstacles in the way of becoming a productive citizen and head of a family.

Children need special protection against accidents. They are easily fatigued and consequently more likely to meet with injury in a long day's work. They are incapable of the sustained concentration necessary to avoiding danger. They are curious and thus often court mishap. And when adolescent they are prone to be impatient of control, which leads them to disobey rules made for their safety. Until such time as we can abolish child labor in industry we must provide extra safeguards for them.

There has been progress. The recent rejection of the child labor constitutional amendment of course puts an end to Federal-state coöperation in regulating child labor, at least for the time being. But there remains a considerable body of child-labor laws in the states. All but two states fix the minimum age of employment of children at fourteen or more, though many exceptions are permitted. Thirty-two states have a sixteen-year limit for employment in mines. Many states allow child employment when school is not in session. This practice may tend to uphold educational aims, but it does nevertheless weaken the service of age-limit laws to accident prevention. Most states have laws prohibiting the employment of children of sixteen or under at specially dangerous work. An excellent aid to child-labor law enforcement and to the reduction of work accidents among children is the legislation, already adopted in four states, which allows double or triple compensation to minors who have been hurt while employed illegally.

Now that the states have insisted upon their own full responsibility for the protection of children against industrial exploitation and accidents, we may look to them to make the legal safeguards more nearly adequate. Among the pressing needs are the standardization of age-limit laws and the removal of vitiating exceptions, together with the strengthening to a uniformly high standard of laws prohibiting child labor in dangerous occupations. With the latter there should be a raising of the age limit, which in most of the existing laws is only sixteen years. One study has shown that children from sixteen to eighteen years old are particularly subject to accidents from power machinery. There should of course be a wide extension of the legislation imposing triple compensation in case of injury to children who were employed in violation of law. An outstanding merit of this plan is its incentive to the prevention of accidents.

Prevention the complete remedy

For adults, too, the end to be sought — the most complete remedy — is the prevention of industrial accidents. An accident that does not happen cannot leave a train of evil consequences to family life and to society.

The safety movement that has spread rapidly in the past few years grew out of a realization that it is more humane and economical to prevent the injury than to provide compensation for it. We now have organized "Safety First" work in industrial establishments. In many states effective work is being done by way of inspection of hazards and ordering the installation of mechanical safeguards. Insurance companies and state funds promote safety by increasing or reducing the insurance rates according to the standing of a given plant with respect to the elimination of hazards to life and limb. Many companies now have a force of inspectors who investigate the risk before the final rate is computed. In Ohio, where workmen's accident insurance is successfully carried in an exclusive state fund, a law of 1925 authorizes the state industrial commission, in its discretion, to expend from the state fund about a hundred thousand dollars a year for the investigation and prevention of industrial accidents and diseases.

Accident compensation laws have provided the chief incentive in the safety movement. C. W. Price, long a leader in the national safety crusade, states that during the five years when he was connected with the Wisconsin Industrial Commission accidental deaths were reduced 61 per cent. "One-half of the credit for this accomplishment," he says, "must be given to the stimulus which the compensation law gave to the whole safety movement."

Safety engineers, public officials, and other authorities are now insisting that 75 per cent of all industrial accidents are preventable. It is known that many are needless. Mine disasters due to coal-dust explosions, a source of cruel family and community tragedies, can, for instance, be eliminated by a simple and inexpensive safety device — sprinkling the underground workings with rock dust. But there will always remain, perhaps, a residue of accidental injuries in industry that are inevitable. Protection against these must be provided through adequate plans for accident compensation.

Evils of old damage-suit system

Only a little more than a dozen years ago the workers of America had no recourse, when injured, except suits for damages under the common law or employers' liability laws. Such procedure was long drawn out, costly and uncertain. The weight of judicial rulings was overwhelmingly against the worker. His employer could block his claims, as a rule successfully, by invoking the doctrines of fellow-servant blame, contributory negligence, and assumption of risk. Under liability laws insurance companies took over the employer's risk. Their batteries of highly paid, expert lawyers presented an even more formidable opponent to the poor worker or his dependents. The injured worker's disadvantage gave rise to a tribe of "ambulance-chasing" lawyers who, when successful, often put into their own pockets a lion's share of the damages won.

Illuminating figures were taken in 1910 from the records of ten insurance companies, covering a three-year period. They show:

Collected from employers	$23,523,585
Absorbed by companies in profits and expenses	14,963,790
Received by plaintiff's attorneys (approximately)	1,900,000
Received by injured workmen or their dependents (approximately)	6,660,000

Thus for every hundred dollars paid by the employer in premiums, only twenty-eight dollars reached the worker, and then, in many cases, only after long court action. But even so, those who recovered anything were the rare and lucky ones. Only a fraction of cases were taken to court, because the injured man knew a lawsuit was but a gamble, with all odds against him.

Such conditions were intolerable. The public was aroused. It awoke to the social menace of allowing industrial accidents to continue throwing productive citizens upon the human scrap heap, plunging families into destitution, imposing upon the community a burden of charitable relief, while industry itself slipped out from under its own responsibility. Accident compensation legislation made its advent.

Accident compensation brings relief

The principle underlying workmen's compensation is that the cost of industrial accidents should fall not upon the victims and their families, but upon industry, which in turn shifts it upon the consumer. The costs of work accidents should be treated like all other expenses of production. Without having to go to law, the injured man automatically receives medical care and a percentage of his wages for the time during which he is disabled, or, in the case of permanent injury, for a certain number of weeks, or, more rarely, for the rest of his life. The payment is made by the employer, or more commonly by an insurance company or state fund which has insured the employer against such loss. In most states there is an industrial commission to see that just awards are made promptly. The idea is not charitable relief but compensation for loss of earnings.

How superior workmen's compensation is to the old system of employers' liability is clearly indicated by two official studies.

Until recently the Ohio compensation law in certain cases allowed the injured worker, if he chose, to sue for damages instead of accepting compensation benefits. The industrial commission investigated fifty-eight cases where the employee had made use of this privilege and compared the results with those which an appeal to the commission would have given. The comparison is summarized thus:

Items	Total	Average per case
Amount for which suits were brought.......	$1,710,630	$29,494
Amount of final settlements................	174,480	3,008
Amount of claimants' attorney fees and court costs................................	61,068	1,053
Net amount received by claimants..........	113,412	1,955
Amount receivable had claimants accepted compensation.........................	163,563	2,820
Amount of employers' attorney fees and court costs................................	41,875	722
Cost to employers of settlements plus fees and costs............................... .	216,355	3,730

That is, the claimants received on the average 30 per cent less, and the cost to the employers was over 30 per cent more than would have resulted from appeal to the compensation law. The courts and lawyers got the difference, which totaled $102,943.

In a most extensive and thoroughgoing study of compensation to dependents of men killed in industry, published by the United States Bureau of Labor Statistics, a comparison was made of the condition of such dependents in three states. The states selected — Pennsylvania, Connecticut, and Ohio — represented three types of law.

Pennsylvania at that time (1915) had *no compensation law.* A suit at law or the generosity of the employer was the employee's only hope for indemnity.

Connecticut had an *elective compensation law.* Neither employer nor employee was obliged to come under its provisions.

Ohio had a *compulsory compensation law.* All employers were required to insure in a state fund.

Significant facts brought out in this study are listed in the table below.

	Pennsylvania	Connecticut	Ohio
Number of cases investigated	305	188*	451
Number cases married men	137	53	206
Number families receiving indemnity	55	48	200
Amount of indemnity received per family	$636	$2,269	$3,098
Average weekly income of families before accident	20.43	19.67	19.46
Average weekly income of families after accident (exclusive of indemnity and charity)	6.33	6.05	5.42
Per cent of widows taking up gainful occupations	31.4	18.9	28.2
Per cent of families receiving charity from public	23.4	1.9	1.5

* In Connecticut 68 of the 188 cases were not under the elective compensation law, so that only 120 were really included in the investigation.

The report concludes:

> The situation may be summed up by saying that, in the compensation states, the families of victims of industrial accidents knew with reasonable certainty what they might expect, received it with reasonable promptness, and found it, in general, sufficient to keep them from extreme hardship. In the liability state visited, the families of decedents were entirely uncertain as to what they would have or when they would get it. That statement is not quite correct; a large proportion were quite certain that they were not going to get anything and that it was no use to try to do so. Whether a victim's family received anything depended much more upon the employer than upon the family's need or upon his earning capacity, or upon the nature of the accident. In general the payments received were quite inadequate to the needs of the families. Not far from one-fourth of those visited had already, within less than a year from the fatality, been obliged to seek charitable aid, and there was every prospect that many more would have to do so before long. And many were living in a degree of poverty and destitution which can hardly be exaggerated. Of course, not all the families visited in Pennsylvania were

suffering and not all in the other states were comfortable. But looking upon the situation in each state as a whole, that in Pennsylvania presented a nightmare of suffering and destitution as compared with that in the other states. Neither of the compensation systems studied is beyond criticism, but their results are so superior to those of the liability system that the claims of their advocates may be regarded as wholly justified.

The success with which compensation legislation is lessening the need for charitable relief is emphasized in the eighty-first annual report, recently issued, of the New York Association for Improving the Condition of the Poor.

Says the report:

> In 1914 the A.I.C.P. participated with other social organizations in a successful endeavor to secure compensation for deaths and injuries in industry. It did this because it believed that this was a proper charge upon industry and should not be left to the uncertainty of reference of such cases to public or private relief organizations. It is also believed that the development of workmen's compensation would tend to stimulate the reduction of the total volume of accidents in industry.
>
> Ten years' results of the operation of the Workmen's Compensation Act have amply justified the effort. Accidents are now compensated for with a certainty. Hospital and medical care are provided, insuring a maximum of possibility of early recovery and return to industry, and a considerable group of families are removed from the necessity of applying for relief to any organization. Furthermore, the experience of the past ten years has demonstrated that the volume of dependency created from this source was too great to be readily met as a relief problem by either public or private organizations. Evidence seems to indicate also that the operation of this law is tending to reduce the total volume of distress due to accidents in industry.

Compensation laws have proved that they can and do soften the blow of an accident to family well-being. They are doing away with a vast deal of the suffering and want and broken lives resulting from disabling injuries. They still, however, fall short of their possibilities.

Desirable standards for workmen's compensation

What remains to be done to make compensation legislation adequate? To include all workers and to bring every law abreast of the standards, for instance, embodied in the bill now awaiting belated action by Congress to provide accident compensation for private employees in the District of Columbia, would mark a new era in protection against accidents. The chief standards to be aimed at may be briefly outlined, thus:

1. *Relief must be certain, prompt, and automatic, and applicable to all.* Certainty is provided by requiring employers to take out accident insurance. Promptness calls for the commission form of administration, which eliminates costly delays of court procedure; for a short "waiting period"; and for the penalizing of unwarranted appeals from awards. Automatic relief, without the waste of litigation costs or the unfairness of unreviewed settlements, is assured by proper court review. Compensation should cover all occupations, including small establishments.

2. *Earning capacity of the injured worker must be restored as completely and as quickly as possible.* This requires unlimited medical care, so that needless permanent injuries may be averted; vocational rehabilitation (including maintenance when necessary), so that a man rendered unfit for his old occupation may be returned to industry in a job suited to his condition; and the creation of special funds for "second injuries" to protect the employability of permanently disabled persons, so that, for example, an employer need not hesitate to hire a man with one eye gone through fear that if an accident in his plant takes the remaining eye he will have to pay the higher compensation for total blindness.

3. *Loss of earnings due to accidents must be met at least to a degree that will prevent individual and family distress and social degeneration.* The scale of compensation payment should be adequate — at least two-thirds of wages, subject to a weekly maximum of not less than twenty dollars. In fixing the compensation rate, the probable increase of earnings of a minor should be taken into account. Certainly in death cases and possibly also in cases of permanent total disability, the size of the dependent family should be a factor in setting the rate. The payments should continue, without arbitrary limits, as long as there is actual need. To dependent children this should be long enough, say to the age of eighteen, to permit proper education for future work; to widows or parents until death or remarriage; to the injured worker until his earning power is restored. Compensation for permanent injury should cover the period of complete disability and the "healing period," and should also allow for permanently reduced earnings.

4. *The stimulus of compensation laws to accident prevention should be fully utilized.* Willful misconduct or carelessness by either employer or employee should be penalized. An aid in keeping children out of prohibited employment, and hence out of danger, is the provision for imposing double or triple compensation for injuries to minors illegally employed. And, as noted before, "merit rating" by insurance companies and state funds is effective in encouraging employers to make their works safe and thus win a lower insurance rate.

3. THE CONTROL AND ELIMINATION OF INDUSTRIAL DISEASES [1]

By Lee K. Frankel

Vice President, Metropolitan Life Insurance Company

Industrial hygiene is one of the major branches of the field of preventive medicine. Its prime importance as a part of the life conservation movement is determined by the large number of persons who are exposed to hazards in industry. There are millions of men and women in the United States who, whether they like it or not, must accept the working conditions which they find in their particular work places. Only the conscience of industry and the depth of public interest stand between these men and women and the industrial hazards to life and health and to the welfare of families. Substances used in industry, working processes, the sanitary and other physical condition of work places are fixed for them. It is the aim and purpose of industrial hygiene to modify, so far as practicable, the specific hazards of industry to the end that there shall be less disabling illness, less suffering, and fewer premature deaths as the result of the hazards to health which the workpeople of this country accept as a necessary condition to employment.

During the past fifteen years there has been an ever widening appreciation of the constructive work which industry can perform to mitigate distinctly industrial hazards to health and life. Yet, even at the present time, we have no way of accurately measuring the prevalence and the resulting mortality and other social costs of industrial disease. While health and industrial conditions are undoubtedly much better than they were fifteen years ago, this judgment is based largely upon impressions derived from generalized data quite remote from specific situations in given industries. Further progress in industrial hygiene will depend largely on the steps which are taken to make comprehensive record of the exposures to specific hazards, the illnesses, the disabilities, and the deaths which arise from such hazards, and on critical analysis of the resulting facts.

---

[1] Reprinted from the *Annals* of the American Academy of Political and Social Science, Vol. CXXI, September, 1925, pages 10–15.

We can feel confident, however, that there has been real progress in the control of industrial diseases during the past decade. Certain general statistical evidence is available for one or two sources of social loss. There are other evidences that the work of the past decade has been effective in the recognition of specific local situations and that further and substantial progress will be made in the near future.

Specific progress

Perhaps the best instance of apparently successful control of one hazard is the experience with phosphorus poisoning in the match industry. After attention had been directed to this problem, more than ten years ago, legislation was enacted which placed a prohibitive tax upon matches containing white phosphorus. This led shortly to the practical abolition of the use of this substance in the manufacture of matches and consequently to the practical extinction of white phosphorus poisoning among workers in this industry.

At or about that time, general interest was aroused in the problem of lead and other industrial poisonings. Wide publicity was then given to the health hazards in industries using lead compounds. While there are no statistics available on the reduction in cases of lead poisoning, there are certain facts which suggest that marked progress has been made in controlling this hazard. The death rate from chronic lead poisoning among white males at ages fifteen and over, in the Industrial Department of the Metropolitan Life Insurance Company, declined from a figure of 15.7 for each million of such policyholders in 1912 to a rate of 6.6 per million in 1924. This represented a reduction of 58 per cent in the death rate from chronic lead poisoning. Among males in the United States Registration Area at ages 15 to 74 years, the death rate in 1911 was 6.4

per million, and in 1923, 3.9 per million. This represents a decline of 39 per cent in the death rate from chronic lead poisoning among all males in the population of the Registration Area at ages 15 to 74 years.

It should be recalled also that this marked decline in the death rate from chronic lead poisoning took place in the presence of an increase in the use of lead compounds in industry. I refer particularly to the increase in the manufacture of rubber tires; to the new and widely developed industry of automobile painting, which involves very serious exposure to lead poisoning; and to the extensive development in the manufacture of storage batteries as ancillary to the automobile and radio industries.

Some scattered information is available on the reduction in lead poisonings in specific establishments. In one paint manufacturing establishment, before measures of control were established, 20 per cent of the working force was ill and six weeks was the average term of service in the dry-color department. After certain hygienic measures were instituted, there occurred practically no illnesses from lead poisoning and the personnel of this department remained fairly stable. In a car manufacturing establishment where seventy-seven cases of lead poisoning occurred in one year, the institution of hygienic measures resulted in the practical abolition of lead poisoning in the following year. In the state of Ohio some rather remarkable work has been done in the reduction of lead poisoning following the adoption of the so-called "lead law" in the state in 1913. In twelve industrial establishments which formerly produced practically all of the reported cases of lead poisoning, after the adoption of preventive measures, lead poisoning has practically disappeared. Dr. Hayhurst says that it is now rare to receive case reports of lead poisoning from these plants, and he is convinced, after thoroughly investigating the methods adopted to prevent lead poisoning, that such cases seldom occur and that those which do occur are invariably mild in form.

We have practically no historical information on the control of other occupational poisonings. Only four deaths from this cause were reported in the experience of the Metropolitan Life Insurance Company in 1924. For this reason it seemed hardly worth while to develop the historical statistics for these poisonings from the records of the Metropolitan.

Some general mortality statistics

There are no other sources in the morbidity or mortality statistics available to us which throw any more light on specific progress in the control of the industrial diseases in the United States. But there are some generalized mortality statistics which suggest that there has been fundamental progress in the alleviation of industrial stress. Thus the expectation of life in white males above ten years of age in the Industrial Department of the Metropolitan Life Insurance Company was 45.6 years in 1911–1912. In the year 1923, the expectation for this group was 51.0 years, a gain of more than 5.5 years in the interim. The death rate among white males at the ages of 15 to 64 years in the Industrial Department of the Metropolitan in 1911 was 13.77 per thousand; in 1923 the death rate was 9.40 per thousand, or a reduction of nearly 32 per cent over this period. Between 1911 and 1923, the death rate of white females at the same age period in the Industrial Department of this company declined only 24 per cent, from a figure of 10.52 in 1911 to 7.98 in 1923. The more favorable rate of decline in mortality for adult white males suggests that there may have been life-saving influences at work among these white males which did not apply to the group of white females, who were influenced by the same forces of improvement in domestic and general community conditions as affected white males. It is impossible to say how much of this more favorable decline in the death rate of adult males was due to improved industrial conditions. One must consider a host of forces not subject to direct measurement: prohibition, hygienic instruction of men in the army, the wider contacts of men with the flow of ideas emanating from the public health movement, etc.

The facts for the decline in the death rate for tuberculosis of the lungs among white males and white females at ages 15 to 64 years are also of interest. Between 1911 and 1923, the decline in the death rate for tuberculosis of the lungs was 57 per cent for white males and only 46 per cent for white females. This favorable margin of 11 per cent in the decline of the tuberculosis death rate for white males may not, of course, be credited entirely to improvements in industrial conditions. We must consider seriously the effect of the anti-tuberculosis work of the past twenty years, especially in view of the fact that males in the population have been able to take advantage of sanatorium and other curative facilities more readily than have females. The industrial factor is present in these statistics, of course, but the extent of its influence is masked by many other factors the precise effect of which cannot be measured.

If the facts could be secured, I believe it would be found that total mortality directly ascribable to all of the factors of industrial character combined, other than accidents, would not amount to as much as the mortality from a single disease such as pneumonia or Bright's disease, which amounts to about one death per thousand lives per year. It seems possible that when the scattered elements of the industrial hygiene movement are brought together and when the reporting of industrial disease and of the consequent mortality is placed upon a reasonably sound basis, then specific lines of action will be developed which will shortly result in the practical extinction of the sickness and mortality arising from this cause. We may be overestimating the force of specific occupational hazards upon the general mortality record. Only the effective reporting of industrial disease and of its direct effects will enable us to gauge this factor. It is hoped that steps can be taken to secure on a uniform basis the facts which will, for the first time, give us an adequate idea of the effect of industrial hazards upon the general mortality record.

The physician in industry

There are certain other facts which suggest that industry today has a better control over occupational hazards to health than it had ten or fifteen years ago. These are not facts in respect to the specific prevalence and mortality of industrial diseases, but relate to the organization of work in industrial hygiene and to substantial refinements in methods of attack.

Consider first the rise of the physician in industry. A large number of the more important establishments now employ industrial physicians on a full-time basis. The work of these men in selecting personnel for work in the industry, in conducting periodic medical examinations, in organizing and conducting clinics, and in making special studies for the prevention of industrial disease, all have, no doubt, had a beneficial effect upon the health of the workers engaged in these industries. The Annual Proceedings of the Association of Industrial Physicians show that a large number of doctors are now engaged in the active study of the problem of industrial disease. Furthermore, the work of these men in industry is encouraged by the research and survey activity of the United States Public Health Service, the Bureau of Mines, and other Federal departments, the state departments of health and labor, and the departments of industrial hygiene of a number of progressive medical schools. Out of a total of forty-eight states, twenty-six are reported to have the supervision of the health of workers under labor departments, while four states and the District of Columbia have similar functions under the health department.

State and Federal aid

The movement for the compensation of occupational diseases has progressed to the point where, at the present time, twelve states and the Federal government provide compensation, either for occupational diseases generally or for designated diseases of this class. No statistics of any great value to the industrial hygiene movement have been published for the compensable occupational diseases. The right organization of data sources, the display of the facts on uniform schedules for the several industries and areas, and the prompt publication of the results of tabulation, are problems of the future. It may be possible that within a few years a plan may be drawn up for the tabulation and publication of the statistics of industrial diseases developed in the compensation field. These will be as useful as are the facts on industrial accidents now being reported in accordance, more or less, with the requirements set forth by the Committee on Statistics of the International Association of Industrial Accident Boards and Commissions.

A further progressive step was taken by the Massachusetts General Hospital in 1916 in the organization of its industrial clinic. It was felt at that time that a really accurate determination of the incidence of occupational diseases and poisonings involved the preparation of machinery for recognizing these diseases. At that hospital every patient coming to the out-patient department was interviewed by an assistant familiar with the hazards of industry. All cases which could possibly be of occupational origin were referred to the Industrial Clinic under Dr. Wade Wright. In this way 5,000 out of a total of 32,000 admissions to the out-patient department were referred to the Industrial Clinic, and approximately 2,000 of these were ultimately found to be suffering from occupational disorders of one kind or another.

Dr. D. C. Parmenter, who is now in charge of the Industrial Clinic at the Massachusetts General Hospital, reported that in 1923, out of 27,888 cases admitted to the out-patient department, 5.6 per cent consisted of new admissions to the Industrial Clinic. In the first three months of 1924 there were 407 cases of exposure to industrial hazards. Of these, 151 were exposures to lead, and 64 to various other types of poisons. It is possible that the wider extension of this practice in other areas would result favorably.

Another forward look suggests that real progress in industrial hygiene will depend upon localized rather than generalized effort. Thus, for instance, the health hazard of silicate dust in the granite working industry involves a careful survey of granite quarrying and cutting. Following the studies of Dr. Frederick L. Hoffman into the effect of the dust hazard in Barre, Vermont, and vicinity, steps are being taken currently to determine ways and means of mitigating this hazard. Specific local situations can be treated in a similar manner and practical suggestions made for the control of industrial hazards. These constructive efforts have resulted from the joint action of employers, employees, and public officials interested in the problem of industrial hygiene. Other successful instances of such coöperative efforts are the studies made of the hazards of the garment industry in New York City and of the hazards of the printing trades.

In the immediate future we may have to deal with newer hazards. The recent experience with necrosis following what is apparently the effect of radium in the manufacture of watch dials, the hazards incidental to the manufacture of tetraethyl lead, and the sharp prominence of the carbon monoxide hazard for garage workers, are instances in point. We have, therefore, to deal not only with the industrial hazards which are already recognized, but to provide facilities for the detection and prevention of newer hazards which arise in the course of industrial development.

LX. SOCIAL RESPONSIBILITIES: RECREATION[1]

By Nels Anderson
Instructor in Sociology, Columbia University
and Eduard C. Lindeman
Professor of Social Philosophy, New York School of Social Work

Any study of urban life must take into account recreation; indeed, the study of recreation is one of the most informing approaches to the study of any stage of civilization. The foregoing chapters on the functions of the city have dealt largely with the material or serious aspects of urban life. Recreation is no less important a function in the behavior patterns of urban population.

The city is not only more stimulating, creating more wants, but it also supplies more resources for meeting them. One bank suffices to serve the needs of a village, and consequently no banking group or banking center arises, but many banks are needed in the large urban centers, and as a result many people participate and make their living in banking, finance, and credit. This group, then, takes its place beside other functioning and specialized groups, adding something to color the habits of the total urban population. To a degree every function leaves its impress on the sum total of what constitutes the culture of the city. The recreational and non-vocational activities of the people constitute another group of functions influencing urban life.

In a sense, recreation may be considered as much of a specialty as are those activities which contribute directly to supplying the material necessities. It is one, at least, of the great motivating forces in the social life that has always characterized cities. Indeed play sometimes seems to be the end for which all other urban functions exist. The great Coliseum of Rome may be taken as the type and symbol of play interests in an early city. From all the country round about, as well as from the city itself, the people flocked to witness the gladiatorial contests, exhibitions of strength, bravery, and speed. Some historians have indicated this — an exaggerated interest in recreation — as among the causes for the decline of Rome. In many ancient cities, business and recreation were pleasantly mixed, much as they are in some modern Old World cities which have not been completely mechanized by our strenuous commercialism. Market days were also festive days. Holy days were also market days. The tradition which has produced our county fairs has developed from the early fairs and markets which were opportunities for recreation. A study of early nursery rhymes indicates how the market and the fair were opportunities for the people to go to town to buy, sell, and mix in the gaiety and entertainment. Going to town in some parts of the world is still an event to be anticipated and remembered, perhaps even to be cast in rhyme as in the early days of England (*vide*: "Simple Simon met a pie man, going to the fair"; "Ride a-cockhorse to Banbury Cross" [a market cross]; or "As I was going to St. Ives [another market and fair town] I met a man with seven wives").

---

[1] Reprinted by permission from Nels Anderson and E. C. Lindeman, *Urban sociology*, Alfred A. Knopf, 1928, pages 157–176.

The three-part day

But the contemporary industrial city draws sharp lines between business and pleasure, pursuing each strenuously but separately. The city-dweller works in one place and plays in another, and often with an entirely different set of people. With grim seriousness he performs even routine jobs and his play is in the same strained manner, although he may give the appearance of joyous abandon. He works and plays with his eye on the clock. On the job he sells his time by the hour, and the recreation he buys is often ticked off by the minute. Getting his money's worth is in the final analysis a matter of the duration of the pastime, whether a ball-game, a movie, a dance, or games. Daylight and darkness divide the rural day into two parts. In the city, the clock makes the division three: eight hours for work, recreation, and rest respectively; and the three are seldom mixed. Such an arrangement suits the mechanized life with its strain of concentration.

How then do city people give freedom to their bodies, outlet to their imaginations, and joy to their existence? In this time which is blocked off for them as leisure, what do they do? And what light do their recreations throw upon city life as a psycho-sociological phenomenon? In attempting to find satisfactory answers to these queries, two considerations may profitably be kept in mind: (1) In the United States a distinct cult of play has become one of the bases of urban existence. Historically it arose during the days of bicycling, and received its greatest impetus during the administration of President Roosevelt, who popularized play and the strenuous life. One of its by-products is a widespread system of supervised and municipally financed recreation which is characteristic of all American cities. (2) Since the earliest days of western pioneering, a sporting tradition has existed in the United States. The expenditure of from one to three millions of dollars to witness a prize fight is in line with this tradition. The bronco-busting cowboy may no longer find profitable employment for his half playful though dangerous occupation, but he can now enlist in one of the professional rodeos held each year in New York City or Chicago. The first of these two considerations explains in part something of the universality of interest in play and recreation which is representative of the nation as a whole, and particularly of cities. The second trend gives a clue to the gigantic systems of professionalized play, recreation, and sport which exist in all our modern urban communities. Two tendencies, then, need to be taken into account, for both have reached their height in cities: that which leads large numbers to engage in various forms of recreation, and that which leads toward a high degree of professional expertness in sports engaged in for profit and as exhibition before large audiences.

Play as social treatment

Recreation[1] is both a juvenile and an adult interest; it is both a private and a public function, and in its application is both amateur and professional. Spontaneous play for children is an end rather than a means to an end. But frequently it comes to the child from the adult world as a discipline or as treatment, guidance, education, or in some form which is virtually a means to an end. When the child is a social problem, play is frequently prescribed, or perhaps it would be better to say that a certain play programme is prescribed for him. Sometimes when he appears in the juvenile court as a delinquent, the judge sentences him to play, forbidding him to play with certain groups, and requiring him to play with others, telling him also where and when to play. In the large city the child is a great liability. He has no natural occupational function such as he formerly had in pastoral and agricultural economic organizations. There are not even chores for him to do. So he plays and goes to school until he reaches the age at which the law releases him to go to work, and then he is at liberty to become a wage-earner. While many forms of recreation are participated in for their own sake by adults as well as by children, play is often a means to an end for both, prescribed and taken for the sake of the health or for some other ulterior reason.

---

[1] The terms *play*, *recreation*, *sport*, and *amusement* are used somewhat indiscriminately in this chapter. There are, of course, technical distinctions which should be noted. *Play* is any spontaneous activity engaged in for its own sake; its values are immediate. *Recreation* may be either play or exercise; it is activity engaged in for the purpose of contrast, or relief. *Sport* is play raised to the level of contest; its chief values are not those derived from the activity but rather the secondary values which result from victory. *Amusement* is a term which has come to be used to denote

Any study of play, particularly for the child in his outdoor activities, focuses attention on the problem of space. High rents and rising land values have forced the occupation of almost all the available space except where lots await development or where land has been appropriated by the city. Streets, which occupy from 25 per cent to 40 per cent of the total urban area, constitute the chief urban playground. The city makes its own peculiar demands and sets its own limitations upon play. In the congested areas where the value of property is measured by the number of human feet passing by in each twenty-four hours, recreational demands must make their way against powerful pecuniary interests. To

---

non-pecuniary activity (or inactivity) the chief value of which is relief from boredom or from the serious business of life. These distinctions are, obviously, psychological in nature; the distinctions are drawn by virtue of the interest which leads to activity; the interest in turn determines the kinds of value derived. It has become customary to deal with the term *play* as if it belonged predominantly to the life of children and as if it were based upon an instinctive drive. Instead of resorting to repeated definition and discrimination, it has been thought advisable to use the above terms interchangeably. They all connote activity of leisure time. The sociologist's quest is for an explanation of the relation of leisure-time activities to the remaining aspects of city cultures.

engage in play and recreation in a city means to occupy space which might earn attractive dividends. In its recreational studies the Russell Sage Foundation has found that a minimum of one hundred square feet is required for a child playing, and for running games a minimum of a thousand square feet to the child. Authorities also estimate that one-tenth of the area of a city should be given over to playground use, that is, in addition to the 25 per cent to 40 per cent used by the public for thoroughfares. Unless the city sets such space aside before the building period begins, the rising land values due to the domination of commerce and industry render purchase prohibitive. Indoor play space is for the most part privately owned and operated for profit.

Playgrounds and safety

Recreation in parks and playgrounds, where security to life and limb is guaranteed, is receiving increased attention. In the more congested quarters, where the thousand square feet to the child in running play are not available, the traffic is often cut off for certain hours of the day, and certain streets are set apart as zones of safety for children. The promotion of safety is, in fact, the principal argument used in behalf of an appropriation of $20,000,000 for playgrounds, as indicated in the following resolution submitted to the Board of Aldermen of New York:

> Whereas, The first need of the people of our city today is children's playgrounds, in order that we may decrease the municipal murder of New York's children which now goes on at the rate of one or more child killed every day in the year by motor vehicles in the streets of New York, and in order to give the children in our city an environment that is more healthy and wholesome, as well as safer, as a force against the present factors which make for delinquency and criminality;
>
> Resolved, That the Board of Aldermen request the Board of Estimate and Apportionment to set aside forthwith the sum of $20,000,000 for the immediate purpose of playgrounds in crowded parts of all five boroughs, to the end of giving New York the good name which she now so woefully lacks in this regard in comparison with other American cities.

How effective playgrounds seem to be in saving life is indicated by the following excerpt:

> Declaring child accidents were reduced in proportion to increase of safe play facilities, the Public Education Association of the City of New York

cited yesterday, in support of a plea for more playgrounds, the killing of 38 children and maiming of 1,300 others in New York streets in September.

"This killing and maiming," said the Association's statement, "is again approaching the maximum of an average of 40 deaths per month, reached in the first six months of 1927. The average in the vacation months of July and August was 30 per cent less than in the preceding months. These are the months during which vacation playgrounds are operated by the Board of Education, and it seems fair to deduce some relation between existence of safe play facilities and reduction in the rate of child accidents."

Studies reveal, however, that the greatest number of fatalities occur in the outlying streets, not in the congested districts. The percentage varies from city to city, ranging from 15 to 60, but the majority are killed on the block where the child lives, or immediately near, and "especially during the evening rush hour." It is estimated that 37 per cent of the persons killed in the United States by automobiles in 1925 were children under fourteen. Lewis I. Dublin says: "In the cities this proportion is often a half. It is now absolutely unsafe for children to play in the streets of our cities." Thus, with the city streets more dangerous than the battle front, there results, besides the loss through tens of thousands of children being killed or permanently injured, the ever present orgy of fear which cannot help leaving its impress upon their nervous systems. Playgrounds tend to reduce this number, and their cost is not prohibitive; after the initial expense, no more than one per cent of the total municipal budget is required.

The space problem

The gravity of the urban recreation problem is aggravated by other drastic limitations growing out of the lack of space. Even where the child has the prescribed thousand square feet for running play, there is danger of friction, of incurring the displeasure of adults or of the agencies of discipline in which society vests authority, namely, the schools, the police, park guardians, and sometimes the church. The crowd is probably responsible for much of the maladjustment. At the periphery of the city, more and more space is being given over to recreation, especially for golf. The wealthy who have leisure can afford to travel outside the city for an afternoon game, and to serve this group, country clubs are multiplying. Then there is the large automobile-owning class (decreasing proportionately with the size of the city) which begins to have freer access to the open spaces. During the three-day holiday, Saturday to Monday, July 4, 1927, it was estimated that no less than six hundred thousand persons from greater New York went to the country places, the resorts, and the beaches. Most of them went by train and boat, and the auto traffic can only be guessed, but the highways were choked, as is the case on holidays on nearly every road leading from the city to the open spaces. The increase in the use of fresh-air farms and outing camps may also be a result of the increase of good roads and a widespread car ownership.

Due to the pressure on space, the patterns of recreation are rapidly changing. The form of many games is being modified. Where ball is played on the streets, the soft ball is substituted for the hard. Handball, requiring little space, is becoming very popular, while running games that predominate in the village are not found. Perhaps the pressure on space has had something to do with the disappearance of the old-time "square dance." Certainly the "round dance" or couple dance requires less room. There are other reasons, of course. For instance, the square dances were of the community and utilized large groups, and certainly would not be welcome at a public dance where most of the patrons are strangers, each interested in dancing with one or two friends. More significant still is the fact that the home is no longer a recreational center. McKenzie in his neighborhood study of Columbus, Ohio, found that the old-time forms of recreation — "picnics, neighborhood dances, barn dances, fishing parties, friendly visiting, etc." — had been all but discontinued. In this survey it was found that of a thousand families, 235 reported no visiting at all, and only 506 families reported more visiting in the neighborhood than outside. McKenzie concludes that social visiting, which is such a well-established custom in rural life, is becoming obsolete in the city. Social and recreational life is fast becoming an interest outside the home, an interest to be exploited by commercialized recreation or to be assumed as a public function.

Commercialized recreation

When the home ceased to be a recreational center, all the traditions and habits of utilizing leisure time which were identified with it vanished.

Sophistication supplanted simplicity, and the old pastimes — parlor games, singing old songs, etc. — were set aside. To fill the gap, we have developed (1) the agencies which operate for profit; (2) the agencies supported by private funds; and (3) the public agencies supported by taxation. The commercialized pastimes have all but monopolized the field, if monopoly is determined by the amount of money spent. The city of New York, for instance, has 208 theaters and 580 motion picture houses with a total of 858,973 seats. According to estimates by William F. Quigley, Commissioner of Licenses, in the report of 1927, a million and a half patrons visit these each week day. In 1925 the fourteen leading cities in the United States contained 2,162 theaters, including the moving picture houses, and their capacity was sufficient to seat one person out of every nine of the total population of these cities. In Buffalo there were ten regular theaters (for the spoken drama) with a total seating capacity of 16,987, or one seat for about every thirty of the population, or one theater for every fifty-one thousand of the population. In addition there were fifty-nine moving picture theaters with a combined seating capacity of 22,345, or one seat for about every twenty-two of the population, or one moving picture theater for every eighty-six hundred of the population. These figures give some indication of the extent of the commercialized theater in the United States, but they are on the whole inadequate, since the movement itself is thoroughly dynamic; for example, seven new large theaters for the spoken drama were erected in New York City during the past year, and motion picture theaters emerge like mushrooms in every neighborhood of every city. The financial investment in these institutions is about one and a half billion dollars, and the daily attendance is about twenty million, which, incidentally, equals the number of automobiles we have in the United States.

The following table of yearly "luxury expenditures" in the United states is no less illuminating:

Tobacco	$2,100,000,000
Races, joy rides, and pleasure resorts	3,000,000,000
Movies	1,000,000,000
Candy	2,230,000,000
Cosmetics, perfume, and scented soap	1,950,000,000
Jewelry	500,000,000

Furs	350,000,000
Soft drinks	300,000,000
Chewing gum	50,000,000
The automobile as a pleasure vehicle	3,000,000,000

These figures are presented as only indicative of the magnitude of the recreative function in the United States, and of the extent to which play is a market commodity. They do not include sports, such as baseball, football, and the many minor ones, or such large items as reading matter, intoxicants, the theater and opera, dancing, and many others. The Buffalo Survey of 1925 indicated that 53,314 people, or about one-tenth of the total population, could be accommodated in the theaters, cinema houses, dance halls, billiard parlors, and bowling alleys — the five most prominent types of commercialized indoor recreation. If this ratio is valid for other American cities, and there is reason to assume that it is exceeded by many of them, this group of commercial agencies could accommodate from five to six million people at a given moment, or many times that number during the day. These institutions, paying high rents, as they often do, and competing for space with other forms of business, must necessarily make large profits. In addition, they are competing with numerous private and public recreational agencies, they pay high advertising rates, and often carry a high overhead expense. Thus commercialized recreation constitutes one of the unique and significant aspects of modern urban life. In the conclusions of the Cleveland Survey, the authors state that:

> Commercial recreation has a distinct and permanent place in the recreational life of the city. In volume of service given, it is much more important than privately endowed or publicly supported recreation.

The qualities of commercial recreation

Commercial recreation is sociologically important in two ways: (1) it influences and colors the cultural pattern of the urban community, and (2) it influences and modifies moral standards. Recreation for which people will pay in money represents a dynamic clue to existing culture. Before the rise of commercial recreation, local communities were distinguished by indigenous forms of play and recreation. The observer could, by analyzing the forms of recreation, recognize certain values inherent in the current culture. If, however, one desires to find similar clues to the cultural patterns of contemporary urban communities, observation will need to be directed toward those recreations and amusements which have taken their place beside capitalistic, profit-making enterprises. The profit-taker's appeal is direct; he hurdles traditions, customs, and mores, going straight toward those fundamental needs and interests which are so far neglected that people are willing to pay in order to satisfy them. Consequently commercial recreation is dynamic. It can enlist capital only if it produces mass results in the form of profits. The measure of success is the intake at the box-office window; therefore it makes its appeal to numbers. In the end, some criterion of quality must, of course, arise, but the initial appeal is to numbers, not quality. The appeal to interest must be pitched at a level to which the largest number can respond. Since the crowd obviously responds, commercial recreation becomes an index to the tastes and sense of values of a community.

Commercial recreation is a most potent factor for cultural standardization. From a film produced in Hollywood, a great many prints are made which are circulated in all parts of the country and abroad. All ages, all nations, many religious and occupational groups see it. If enough of this standardized stimulus is offered, it not only arouses uniform responses but also calls forth imitative habits of thinking and talking. The movie, radio, phonograph record, comic strips, columns in the daily press, the traveling professional entertainers, and more recently the vitaphone and other far-reaching contact devices facilitate this process of standardization. The inroads of standardization have spelled the doom of the unique and individual in recreation. Another great factor for imposing uniformity upon certain age-groups is the dance.

The dance in America

The dance has played a significant rôle in American history, with respect to both rural and urban areas. In many communities and at certain times it has been regarded as the great "taboo" of recreation; and reformers still refer to it as the open doorway to all other forms of degradation and vice. But the dance has been irrepressible as a form of American recreation; whenever denied in proper circles, as Miss Lambin states:

> The dance ran the subterranean course in the outcast groups and suffered deterioration. In the haunts of the tough, the lost, the curious, the idle, it was permitted on payment of an admission fee. Degraded forms were the accompaniment of prostitution and drunken orgies. Couple dancing, introduced in the middle of the eighteenth century, an adaptation of some of the steps of the folk dances, speedily became, for obvious reasons, the only form of dancing in that milieu. The "respectable" members of society, if they danced, did so in their own homes and social groups. But the cheap tenements offered no such opportunity, and despite the crying need of their population for physical recreation, few voices were lifted to ask for the restoration of the dance to better social auspices than the corner saloon.

However, the dance appears to have become respectable once more. Competition has forced out of business both the dark, unwholesome cinemas and the subterranean dance halls. With prices relatively equal, people prefer to go to the spacious, palace-like halls which sometimes cost hundreds of thousands of dollars and bring large returns to their owners. For example, the dance halls of New York are reputed to have earned eight million dollars in 1920. Although urban forces have converted dancing from an ancient pastime into a lucrative business, it still remains the most effective means of socialization. New York claims a thousand dancing schools run for profit, and in the other cities of the country are several thousand more. In 1920 in the United States there were 9,711 professional dancing teachers. With the aid of mechanical devices, hundreds of these now teach by correspondence. Some spend thousands of dollars annually in advertising.

Commercialization and public morals

Moreover, it is this dynamic feature of commercial recreation which leads to ethical considerations. When pecuniary profit is the goal of any enterprise, avarice plays its part. Promoters of commercial recreation seize upon every advantage, always offering something new, "the latest hit." To gain new patrons as well as to retain their former patrons, something which is not already known and accepted is continually being advertised. In this indiscriminate search for novelties, new forms of amusement, and variations in recreation, the promoter frequently runs counter to the accepted morals of the community. Nearly all forms of commercial recreation and amusement are now controlled by municipal ordinances and are subject to inspection and censorship. One form of regulation is achieved through the control of licenses by which the city permits and defines different types of private recreation. The applicant who opens the business is expected to conform to and honor certain standards of equipment, conduct, and morals. Inspection is another form of regulation. To protect themselves against the embarrassment of public interference, private commercial recreations set up their own regulations, disciplining one another. Public censorship, for instance, is being supplemented and sometimes preceded by private censorship. At best, public regulation is a police function, although in enforcing a law the private agencies sometimes resort to what might be termed police methods, and consequently often assume the form of an extra-official but accepted censorship. Every city has its vigilance committees, its anti-vice societies, purity leagues, or protective associations, promoted by the leading citizens, which serve as a sort of voice for morals and decency, goading the public officials to their duty. In Chicago, between one such improvement association and a number of the leading dance halls a truce has been signed whereby the association appoints and the dance halls pay the salaries of matrons and floor managers. Perhaps no single interest in urban life invites more serious attention or is receiving more study than the control of recreation. The reasons are obvious: much of the delinquency among juveniles and misconduct among adults is definitely identified with the misuse of leisure. And if wise direction can bring about improvement anywhere, this seems the logical point of departure. These agencies of public control do not, however, destroy the dynamic quality of commercial recreation; the cosmopolitan nature of urban populations is favorable to change, whether it be of morals or new means of communication. It therefore happens that agencies of commercial recreation, and particularly theaters, in the larger cities have become the chief interpreters, if not instigators, of ethical fluctuations. It is, for example, a well-known fact that plays which may be presented with impunity in New York City need to be considerably modified, "toned down," before they can proceed to the cities and towns of the South and Middle West. But gradually the cities in other regions come to accept the standards which prevail in the more dynamic, fluctuating communities.

Recreation as social control

Commercial recreation has been defined as "a form of business that capitalizes, for personal or corporate profit, the leisure hours of the people." In the same vein it may be said that private and public recreation attempt to capitalize the leisure hours of people, not for profit but in the interest of physiological, civic, social, and moral values. There are, of course, a few private agencies which promote recreation with no other object than to provide fun, enjoyment, appreciation, but by far the larger number present their programmes under the aegis of a chosen set of values. Some offer recreation as an antidote for crime, as a safeguard to health, as a training school for civic and personal virtues, and as a supplementary activity to offset the monotony of labor. Recreation which proceeds under the banner of some such set of values is founded upon a technique and a philosophy. The germ of its philosophy is that recreation is needed to balance life, to give to individuals the opportunity for free and spontaneous expression; in cities, it is claimed, recreation is essential for easing the strain of living, but it is also hoped that guided play will preserve the mores. The central point in the technique of this type of recreation is organization and supervision. Perhaps this technique and its corresponding philosophy are more readily and widely accepted in the United States than in any other nation. The titles of the books, monographs, theses, pamphlets, and periodical articles dealing with the technique and philosophy of play and recreation form a voluminous bibliography. This is not the appropriate place to evaluate this literature, but it should be noted as evidence of the large place occupied by leisure-time activities in the civilization of the United States. Nowhere is the effect of this movement so prominent as in the larger cities. The authors of the Buffalo Recreational Survey say:

> Recreation, or the constructive use of the free time of the people — young and old — is of such supreme importance to individual and public welfare that provisions for recreation should be a public duty and responsibility.

The above statement describes what may be regarded as the municipal recreation credo of most American cities. Indeed municipal departments or commissions of recreation have now become so powerful in many cities that they have taken their places beside police departments in the political life of the community. Thus play and recreation have reached the level of political issues in American life, and politicians have learned that there is no better vote-getter than the promise of a playground to a community. In 1917 Detroit was spending $172,463 annually on public recreation; Pittsburgh, $167,062; Boston, $356,202; and the advocates of expansion in Cleveland estimate that to meet existing needs, their budget should be nearly half a million dollars. Included in the municipal recreation budgets are playgrounds, community centers, public parks, school gardens, bathhouses, bathing beaches, athletic leagues, golf courses, baseball and football fields, tennis courts, facilities for festivals, pageants, etc. Soldiers' Field, where the Eucharistic Congress was held and where more recently 130,000 people witnessed the Dempsey-Tunney fight, is part of the South Park System, one of the fifteen public park systems of Chicago.

A significant item in these programmes of municipal recreation is the public use of the school buildings and facilities for recreational purposes. In many cities the school is regarded as the natural community center. Perhaps this is more true of the smaller than of the larger cities. In Chicago several attempts have been made in civic affairs to institute the town-hall meeting by using the school as the neighborhood center, but none has succeeded. However, the school does function even in the chaos of the large city. It is a center of recreation for children and an educational center for other groups of the population, its programme including plays, games, pageants, lectures, and adult evening classes in which serious studies are pursued, all conducted under public auspices and paid for out of public funds.

The play impulse

In any given American city the list of private organizations and agencies whose programmes of activities are either wholly or in part recreational is incredibly large. A few sample figures, obviously a partial list, but including 315 organizations, for the city of Buffalo, will suffice to give some conception of this phase of urban life:

Churches and recreational facilities	114
Organizations promoting sport and recreation	65
Masonic lodges of various kinds	44
Clubs for adults	34
Dramatic clubs and organizations	23
Choral clubs	16
Settlements or neighborhood organizations	10
City-wide organizations for young people	9

At the time these figures were gathered (1924–1925), eighty-seven organizations were affiliated with the Buffalo City Federation of Women's Clubs, having a combined membership of approximately fourteen thousand. It is, of course, difficult to determine how large a part of the sociable activity involved in the multitudinous private organizations in the United States should be designated as recreational. It is certainly true that many organizations whose stated aims are civic or philanthropic hold their members through incidental recreational appeals. Indeed, during the past decade a rapidly increasing number of organizations have appeared in towns and cities, such as Rotary, Kiwanis, Lions, etc., in which even the serious work is conducted with a play spirit. An example is Rotary, which recognizes that urban existence tends to isolate men because their interests are unlike. However, as functionaries in a larger whole they are as interdependent as the cogs in the golden wheel which is the symbol of the order. "All work and no play makes Jack a dull boy," so they bring together the Jacks and Bills, one from each occupation or business, much as Zonta does with business and professional women, and in superficial jollity strive to mix on a common level, lending an informal touch to their otherwise mechanical and impersonal daily life. In their social intercourse, various artificial devices are resorted to for making association easy and for precipitating humor. Meeting for weekly luncheons, they indulge in good-natured banter, sing nonsense or sentimental songs, and consider motions looking forward to some altruistic service or some programme for boosting things along according to schedule. Each wearing an absurdly large medallion on which his nickname, his real name, and his business are printed in bold letters, men from different occupations, having different backgrounds, are thrown together in friendly comradery. To some observers these gropings for the human touch seem but marks of our cultural sterility — pathetic attempts to superimpose an artificial fellowship upon their otherwise individualistic, urbane existence to which as business men they are harmoniously adapted. Back-slapping, hand-shaking, familiarity with names, and similar manifestations of friendship indicate some of the means which city-dwellers will adopt for relaxation.

The social and recreational activities of the Y.M.C.A., Boy Scouts, and other middle-class agencies are definitely charged with the task of upholding a moral and religious code. Faith in recreation as an antidote for the evils that beset urban society leads to the establishment of numerous organizations for children, for young men, and for women. In every city, large sums are spent annually in such character-building reform recreation, much of which started as the moral equivalent of the public dance and saloon, or as a substitute for pool rooms and questionable resorts. Strenuous efforts are being made on the part of recreational students to utilize leisure-time activities as palliatives for crime and delinquency.

The cult of efficiency demands professional leadership and direction in both commercial and non-commercial recreation. The pace is set by the commercial agencies, and in the press of competition, the non-commercial agencies are forced to fall in line. Even churches with play programmes find it necessary to employ trained leadership. The swing toward professionalism tends to make the way hard for organizations which depend upon volunteers. With unpaid leaders, the Boy Scouts, for example, find it difficult to organize boys in the unfavorable slum areas — the areas where juvenile delinquency is high, and where such guidance is most needed.

Settlements and community centers

The most distinctive recent contribution to urban social and recreational work has been the settlement and community center. Their founders hoped through them to revive the spirit of a neighborhood in chaotic areas. Many well-meaning people went into settlement work; in fact, in the late eighties and early nineties, a wave of humanitarianism swept the colleges, which resulted in the founding of settlements by universities in nearly every American city. Fired with the idealism of reform, many students and some professors turned from the universities to the slums. It was taken for granted that if the denizens of these neglected and poverty-ridden areas would coöperate, they could by being good neighbors overcome many of their difficulties. It was firmly believed that if a community life could be reëstablished, most of the social ills would pass. The open sesame to such treasures of community harmony was to be education, recreation, and the enlightenment of public opinion on which governmental action is founded. Briefly, the common objective of settlements and community centers has been to establish neighborhood life where social disorder was before.

From the settlement as the pioneer in this field of service, a number of most vital institutions either emerged or received the needed aid and guidance. It was the outstanding non-sectarian welfare movement, the cradle of welfare work in the fields of art, health, education, and recreation, but now so many other agencies have been established in these specialized fields that the old-fashioned settlement is no longer so vital an element in social welfare. Settlements which, like Greenwich House, Hudson Guild, and Henry Street Settlement in New York, and Hull House in Chicago, have adapted their programmes as theories of social welfare have changed, and so become real community educational centers, are continuing to make a positive contribution to social work. The system of nursing carried on in Henry Street Settlement is unique, and Greenwich House is conducting an equally unique programme in community organization. The organization of settlements in cities into federations, and the National Federation of Settlements, comprising about three hundred members, are rapidly fertilizing backward groups. As centers for meeting human needs, they are improving their technique, but their success in abolishing slums and in re-creating neighborhood life in congested poverty-areas is still to be assured.

One of the significant facts about recreation is that while it is becoming more specialized, more intense, and more of a mass movement, it is becoming more detached from the home. This means that the home, once the center of community life, has in the city been overshadowed by the collossal mass, commercialism, that is beginning to dominate recreation. Great crowds of people caught in city life with unoccupied hours constitute the market for that greatest of industries, the manufacture and sale of amusement. Whole cities are devoted to the business just as other cities are dominated by the manufacture of furniture, shoes, or rubber tires. In every city, whole areas are given over to such interests. Broadway, for instance, not only sets the pace and dominates the taste for the theatergoers of the nation, but it is fast becoming the production center, with the rest of the nation as only "the road." With the increasing use of the vitaphone, it is not unlikely that for vaudeville circuits even the road will be ignored, and Broadway will become the manufacturing center for a cultural periphery international in scope.

In the last analysis, recreation, besides being an end in itself, as it is in the societies of children and primitive folk, and occasionally among present-day adults, becomes itself a serious problem. Its guidance and control are as much the burden of social science as in some connections it is the means of solving some social problems. Sociologically, the significance of leisure time, as it relates to the problem of social control, is indicated by the numbers of hours alloted to the city-dweller for recreation — from one-fourth to one-third of his time.

LXI. SOCIAL RESPONSIBILITIES: EDUCATION

1. PUBLIC WELFARE AND PUBLIC EDUCATION[1]

By Samuel P. Capen
Chancellor of the University of Buffalo

Students of American democracy are aware that the provisions for public education represent at once the most comprehensive, the most productive, and the most important of the undertakings that may be classified under the term public welfare. These facts are not universally recognized, however. Education is to such an extent an integral part of the life of all communities that it is taken for granted. The majority of the people do not appraise its meaning as a social enterprise. The true position of modern education becomes clear if we review the changes that have passed in this field of coöperative effort within a century.

The function of the early public schools was a simple one. They were designed to cultivate a rudimentary familiarity with the three R's. Even where schools were best supported — and different sections of the country exhibited wide differences in this respect — only a minute fraction of the population ever secured, through organized institutions of education, anything more than these basic instruments of book learning. This was not because the people of the time had no need of further knowledge or training, but because their needs could be supplied by other agencies than the schools. The home, the farm, the shop, the office of the professional practitioner, all participated in the work of training. Such participation was easily possible in a society that was not congested and that was practically homogeneous. Schools were maintained to provide merely those tools of learning which could not conveniently be provided by other means and without which the elementary duties of citizenship could not be properly exercised.

---

[1] Reprinted from the *Annals* of the American Academy of Political and Social Science, Vol. CV, January, 1923, pages 26–30.

This simple dispensation did not fulfill the ideals of early American statesmen, but there is no evidence of popular dissatisfaction with it until comparatively recent times. Advanced education, education adapted to individual tastes or capacities, education for professions or for other specialized pursuits, was not conceived as a rightful public charge. Such education was not available except to the favored few.

The contrast is great between the public education of the early part of the nineteenth century and the public education of the third decade of the twentieth century. Yet although the changes have been rapid, especially within the last forty years, the motives for them appear not to have been wholly apprehended by the people. The changes have accompanied two great social movements: the movement that has led to the concentration of our population in urban centers, with large infusions of people fresh from foreign lands; and the growing consciousness of the complicated problems of a highly diversified democracy. The effect of these two movements on public education deserves more extended discussion.

Change in public education due to changed living conditions

The alteration in the mere physical conditions of living has necessitated the creation of entirely new devices for training the rising generation. Whereas once the school only supplemented the home, the farm, and the shop, it must now, under the spatial restrictions of urban living, completely supplant them. Much has been made of the extraordinary development of American education in the last fifty years. It has indeed been extraordinary. But the most extraordinary aspect of it is that our concept of the function of public educational institutions has been revolutionized. Formerly we intended to give our children, through the schools, only a partial education. Now we intend to give them a complete education. We still fall far short of realizing the intention, but the intention is plainly revealed in legislative enactments and in the expressions of leaders of public opinion.

This change in the national intention, which has been made necessary by the changed conditions of national life, accounts for a number of characteristic developments of the last half century. Some of these may be briefly mentioned.

Education has been made compulsory throughout the nation, and the period of compulsory schooling has constantly been lengthened. This has had a definite reaction on the organization of elementary education. In a large measure it is the cause of the adoption of eight years as the length of time to be devoted to elementary schooling. The introduction into the elementary schools of the encyclopedic array of subjects that now constitute the elementary curriculum may also be referred back to the same cause. Schools now have the time, and the old simple agencies of apprenticeship training no longer function.

Foreign observers are most forcibly impressed by the almost explosive development of secondary education and of public higher education in the United States. The vast network of public secondary schools that now covers the country and the enormous state establishments for higher education are the creation of a single generation. They testify to the national intention to furnish a complete education without discrimination to as many as can avail themselves of it.

And within still more recent years there has come the effort to provide vocational training on a nation-wide scale. In this enterprise the national government itself has participated. Problems have consequently arisen in connection with it that are referred to in greater detail below.

The evolution of this complicated machine, each part of which has a highly specialized function, has demanded the service of a trained professional personnel. Teacher training in the United States has coincided with the expansion of the educational enterprise in the directions mentioned above. The public has been slow to understand the necessity for the professional training of teachers. The reason may be traced to its failure fully to realize the meaning of the changes in the tasks that have been laid upon the schools. When all that was sought of the schools was sufficient instruction to raise children above the level of illiteracy, it did not matter much how ineptly the instruction was given. It was not socially worth while to set aside a group of the best intellects in the population to purvey this instruction, and it was not socially profitable to invest anything in the preparation of those who were willing to denote their lives to this purpose. It is fair to say that the public conception of the profession of teaching is still largely dominated by the traditional view of the school-teacher and of the school. It is not commonly understood that the teacher, if he is equal to the tasks now laid upon him, is an all-round agent of public welfare with such a variety of obligations as are imposed on no other public servants. And the failure of the public to appraise the importance of the teaching function and to provide for it is the greatest bar to the successful performance by the schools of the diverse welfare activities now demanded of them. The fulfillment of the American programme of public education which has been evolved in part unconsciously, which has indeed been forced into being by the sheer momentum of great economic movements, is now halted until the people have had interpreted to them the social significance of the thing they have created.

Public education changed in orientation

The second great alteration in American public education related to its orientation. Gradually the whole structure has become permeated with the social point of view. This is reflected in the relaxation of the rigid physical discipline of former times; children now are taught to live and work together without constant application of external force. It is reflected in the games that are played, in the way they are conducted, and in scores of group activities. But most markedly is it reflected in the content of nearly every old study and in the new studies that have been introduced. The duties of citizenship, its manifold obligations instead of its rights, the conception of service, the idea of the interdependence of individuals and of communities, all of these are now interwoven with the whole fabric of instruction. Lately there have even been developed special courses devoted to these aspects of social living and to the inculcation of these attitudes. In addition the schools have been called upon to act as public mentors in whole departments of public welfare not formerly thought to come within the purview of educational institutions. The use of the schools to furnish instruction in hygiene and sanitation may serve as a single example of this tendency. Undoubtedly these developments are partly due to the fact that the public has discovered the possibilities of the schools as a general utility agency. But in part they are also the direct result of the growing consciousness among leaders of public opinion of the complications and difficulty of democratic living.

The development of the institutions of public education as comprehensive agencies of public welfare on the one hand, and on the other the failure of the public yet to understand the larger meaning and purposes of the organs it has created, have led to conflicting practices in administration. In theory, education is a function of the several states. Its origins have been largely local, however, and the state has only come to exercise authority after the local educational enterprises were well under way. But there is the widest variety in the measures enacted by the several states for state promotion and control of schools. A few states have established quite elaborate machinery for regulating the conduct of public education within their respective borders. Through fiscal control by the central authorities, the equalization of educational opportunities is furthered. Educational standards are also made approximately uniform. New York and California are conspicuous examples of states that have developed central machinery of this character. Certain other states have thus far provided little central control of local educational activities. In these commonwealths the powers of state educational officers are limited to recording important facts about the schools and to recommending desirable procedure. And between these two extremes lie many different forms of state organization.

A survey of state systems leads inevitably to the conclusion that that is no consistent theory of the conduct of this vital public undertaking. The confusion has lately been increased by Federal legislation and proposed Federal legislation looking toward a larger participation by the national government in fostering and regulating the forty-eight educational systems of the United States. It is important to discover at this juncture what should be the relation of organized government to public education. If public education is recognized as public welfare in its largest sense, there are many instructive analogies that help to determine this relation. Under the Constitution, education is a state and not a Federal function. Nevertheless an examination of the Federal government's activities in this and similar fields of public welfare is especially illuminating: first, because the wide variation in the practices of the several states has obscured rather than revealed the fundamental principles; and second, because the Federal government's concern with public welfare is of such recent origin.

National service of United States government

The government of the United States is engaged in two distinct kinds of national service. The first is defensive or conservative, the second is creative. Under the defensive service of the government are properly grouped all those ancient activities relating to the raising of money, the administration of justice, provision for military defense, postal communication, and the adjustment of foreign relations. The agencies which the government has devised to carry on these activites are agencies of self-preservation. Within the spheres in which they operate, they must control absolutely the lives, the property, and the conduct of citizens; otherwise the nation's safety is endangered. Back of them lies the full physical force of the government.

The second kind of service, the creative service of the government, is of quite a different character. In it are included those activities designed to foster industrial production, to encourage scientific inquiry, to promote social welfare, and to advance education. In the comprehensive sense in which the term has been used here, all of these may be included under the caption "Public Welfare." Very evidently the sanction behind the government's promotion of these creative concerns of the nation is not force. It is not even the coercive powers of subsidies. It is persuasion. This is proved by a review of the history of any of the government establishments that deal with these creative interests. Two or three examples may be cited.

The Department of Agriculture effected a revolution in the nation's basic industry in the short space of fifty years. It accomplished this result by the dissemination of knowledge and ideas, by the judicious use of publicity; in other words, by persuasion. Recently, because of the general uncertainty of the relation of government to welfare activities, the department has had to administer large subsidies and to enforce mandatory laws. In them there is an element of coercion. Where the department previously had to persuade, it can now command. The attitude toward it of that part of the public with which it deals is already changing. A dozen years ago the department had a few critics and hardly an enemy. Today it has a considerable number of both.

The Children's Bureau in the Department of Labor has enjoyed an extraordinary prestige and has exercised a remarkable influence. Both the influence and the prestige have been in no sense dependent upon the powers of the bureau, for it has had none. They are due rather to the accuracy of its studies of sociological conditions and to the validity of its conclusions. Recently there has fallen to it the task of administering the subsidies carried by the Maternity Act and so of exercising control in the field in which it has previously furnished inspiration alone. Already the public attitude toward the bureau is undergoing a change.

Many other examples might be cited from among the government establishments occupied with public welfare, but these two may serve to indicate the lesson of the government's experience in dealing with the creative interests of the nation. These interests flourish if furnished with the ideas, intellectual guidance, and leadership. They suffer if subjected to control. For the Federal government the ancient policy of noninterference is the right policy. It is the writer's belief that this represents the fruitful method of dealing with all welfare activities. Whether that is true or not, there is no question as to its effectiveness in dealing with public education. The example of the Federal government's experience should be highly instructive to the states.

2. THE CITY SCHOOLS[1]

By William B. Munro

Professor of Government, Harvard University

Why is education a public function? It is because the aims of education come close to the public interest. The city school, in the first place, endeavors to give young citizens such training as will enable them to earn a living. This is a primary and fundamental purpose, because earning a living is the most insistent problem that most people have to solve. But it is not the only purpose of education; a city school system would be very defective if it confined itself to this alone. The second purpose of education is to develop the personality of the individual, his own resources and mentality, so that he may enjoy those durable satisfactions of life which are not directly connected with the work of earning a livelihood. The enjoyment which men and women derive from life is not entirely dependent upon the amount of their incomes; one need only look about the community to realize that this is so. Even a large fortune does not of itself guarantee happiness. To live a full and contented life, it is necessary to know what is going on in the world, to appreciate its significance, and to understand the many things which, to the uneducated man or woman, are hidden mysteries. Education helps an individual to know himself, to know what is going on around him, to understand the motives which govern the actions of his fellow men, and to adjust himself to the environment in which he lives. Knowledge is power in the hands of everyone who possesses it. The third purpose of education, the social purpose, is perhaps the most important of the three. Education aims to train the individual so that he may better serve his fellow men. Democracy, as has been said, rests upon the intelligence of the people. A democracy exacts from its citizens a type of service which education alone can teach them to give. In its own interest, therefore, it is the function of the community to see that everyone is not only enabled but encouraged to become personally efficient, able to make his own way in the world, and capable of pulling his own weight in that many-oared boat which carries the progress of society along. That is why education has been made both free and compulsory.

---

[1] Reprinted by permission from W. B. Munro, *Municipal government and administration*, The Macmillan Company, 1923, Vol. II, pages 329–331, 337–352.

As the American Constitution gives the Federal government no power to control education, the responsibility rests with the several states. Every state has established a system of free, public education, but the methods of control and management differ greatly from one state to another. Some states have centralized the management of the schools in the hands of the state authorities; others leave this very largely to the school officials of the counties, cities, or districts. Everywhere there is a state department of education, with a board or a superintendent in charge, nearly all the states having both. The local educational unit may be the city, town or township, school district, or (especially in the southern states) the county. A school board, usually elected by the people, erects the school buildings, chooses a school superintendent, appoints principals and teachers (on the recommendation of the superintendent), and appropriates money for the support of the schools.[1]

Educational work of the national government

Thus the national government possesses no formal powers with respect to education in the states. Nevertheless it has done a good deal to promote the interests of public education by publishing the results of investigations into educational problems, and by rendering advisory assistance to the state authorities. It maintains a Bureau of Education which is now within the jurisdiction of the Interior Department. At the head of this bureau is a Commissioner of Education appointed by the President. The functions of the bureau are almost wholly of an informational character; it collects data for the use of educators and publishes this material in annual reports and bulletins.[2] There is a movement to make this bureau a regular Department of Education, with a member of the Cabinet at its head, and to increase its powers considerably; but this movement has not yet been successful.

Within the last few years there has been a good deal of controversy, both in Congress and outside, over a proposal to appropriate further funds from the national treasury for the promotion of general education in the states, particularly in those states where the common-school system needs toning up. This proposal is embodied in a measure which has been before Congress for some time but upon which no favorable action has yet been taken.[3] In favor of the measure it is argued that public elementary education is a national necessity and that if any state or city cannot raise sufficient money to keep its common schools up to a proper standard, the interests of the whole nation will suffer in the end. There is just as much reason, and more, it is asserted, for Federal aid to state schools as for such aid to state roads. On the other hand it is objected that the policy of large Federal subsidies to education would involve the taxing of the populous and thriving states of the East, the Middle West, and the Pacific Slope for the benefit of those other states, especially in the South, where the school system has heretofore been backward through lack of funds. Most of the Federal government's income is provided by the taxpayers of states in which the public school system has already been brought up to a standard where there is no urgent need for Federal assistance. The grants from the Federal treasury would go to states which contribute very little of the revenue. In other words, taxation would be levied upon some states for the benefit of others. This may sound objectionable, but it certainly is not new. Most of the national government's expenditure benefits some states more than others. Most of the state's expenditure benefits some communities more than others. The people of the United States form a nation, not merely an aggregation of self-interested states and communities.

---

[1] This board is known by a variety of names, such as school committee, board of education, school trustees, board of school directors, school commissioners, and so on. The term board of education is perhaps the most common in all sections of the country except New England. G. W. Frazier, *The control of city school finances*, New York, 1923, gives data concerning the school boards of one hundred and sixty-nine American cities.

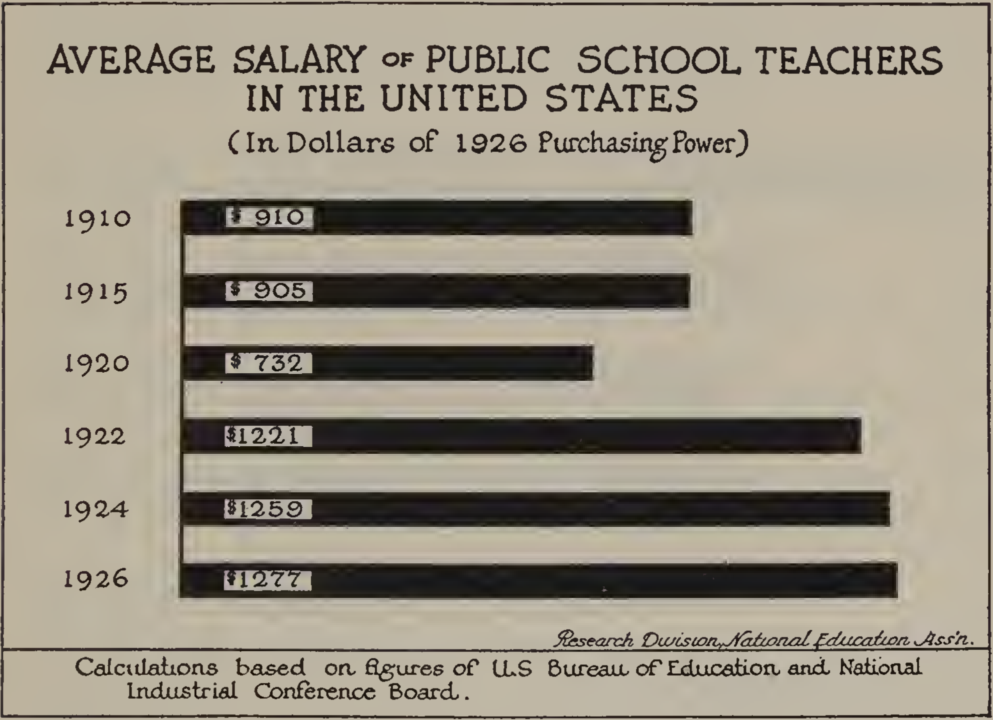
[2] In 1917, by the Smith-Hughes Act, Congress provided that each year a grant from the Federal treasury should be made to the several states in order to encourage vocational education. This money is distributed among the states on condition that each shall contribute an equal amount, the distribution being made, not by the Bureau of Education, but by the Veterans' Bureau, because a considerable part of its work for the present is connected with the providing of vocational training for American soldiers and sailors who were disabled in the World War.

[3] The Smith-Towner bill, now the Towner-Sterling bill.

A somewhat more weighty objection may be found in the probability that if the national government begins the practice of making large annual grants to the states for educational purposes it will, in due course, undertake to exercise control over the public school system of the country. All governmental experience points in that direction. When a government grants money for any purpose, it has an undeniable right to make sure that the money is being properly spent. To do this, it must create some system of inspection. Inspection leads to supervision, and supervision sooner or later merges into actual control. It is feared in many quarters that this would be the ultimate outcome of Federal aid to common-school education on any large scale. And it is a widely held conviction that even a moderate centralization of control at Washington would be detrimental in its effects upon American school policy. The issue is a large one, and we have not yet heard the end of it; but it is not intimately related to the general subject of municipal school administration, and no prolonged discussion of it would be justified here.

Some problems of school organization

Several problems of great importance are engaging the attention of the school authorities at the present time. The more conspicuous among them may be indicated by a series of questions which come under discussion whenever educators meet, and which are of direct interest to the whole community. How should teachers be selected? How may better recruits for the teaching profession be obtained, and good teachers kept from leaving the service? To what age should school attendance be made compulsory? How can pupils be kept from leaving school before they have received a sufficient amount of education? How should the school course be divided? Should we have junior high schools? Should the cities maintain junior colleges, and even municipal universities? Can the work of the schools be brought into closer and better contact with the resources of the public library? Is it possible to use the school plant, after school hours, for various forms of community service? Can greater use be made of the school plant during the school day? And where are we going to get the money with which to carry on all these


AVERAGE SALARY OF PUBLIC SCHOOL TEACHERS IN THE UNITED STATES
(In Dollars of 1926 Purchasing Power)

Research Division, National Education Ass'n.

Calculations based on figures of U.S Bureau of Education and National Industrial Conference Board.

new enterprises if we ultimately agree that they are desirable? These various questions may seem to be unrelated to one another, but they all point to different aspects of a single great problem and may be summed up in one broad query: What changes in school organization will better enable education to fulfill its threefold purpose?

In most American cities the appointment of principals, teachers, and assistants is made by the school board on the recommendation of the superintendent. In most cases the superintendent's recommendations go before a committee on teachers before they are submitted to the whole board. The recommendations must be made from among applicants who possess certain educational qualifications which are laid down, as a rule, by state law. In some cities these qualifications are general in form, merely providing, for example, that appointees must be graduates of normal schools, or of higher institutions, or that they must have state certificates. In other cities a competitive examination is periodically held, and only those who rank high at this examination are eligible, no matter what their prior qualifications may have been.[1] In all cases a certain amount of discretion is left with the superintendent. Some cities use examinations for promotion also, but the more common practice is to place reliance upon estimated classroom efficiency and the superintendent's personal judgment, taking seniority into account as well. It is generally agreed nowadays that promotions should not be made on the basis of examinations alone, nor yet in accordance with the unrestricted discretion of the superintendent. Attempts are therefore being made to devise a plan for reliably measuring the efficiency of teachers by teachers by means of ratings and records based upon the combined judgment of various supervisory officials.[2]

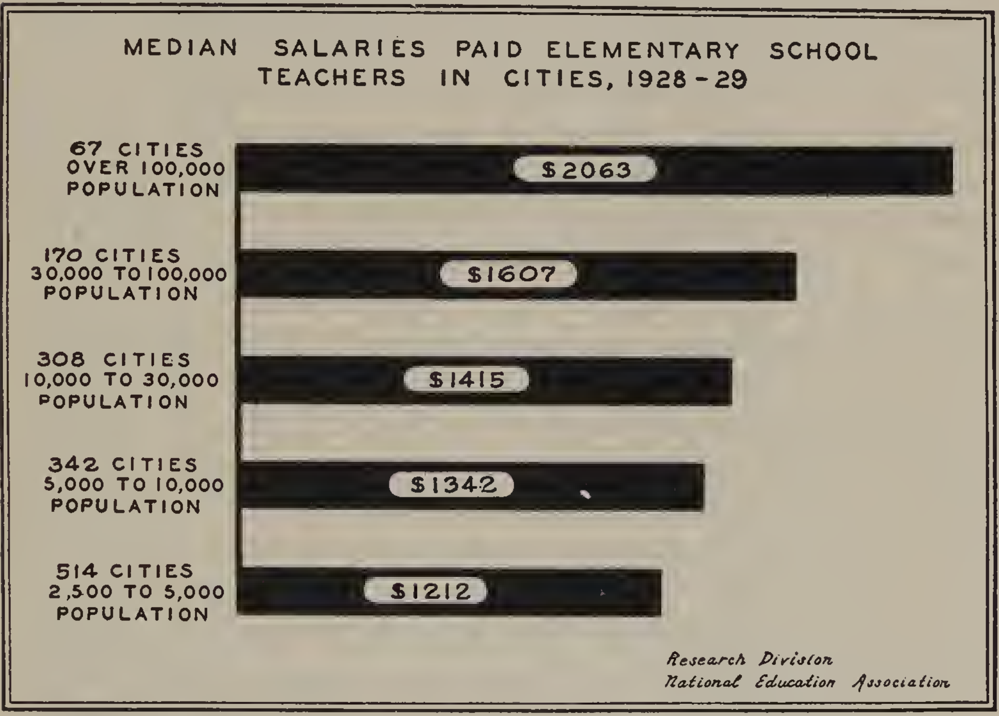
No system of appointment will avail to secure good teachers unless competent candidates come forward. And they will not come forward unless the pay and the conditions of service are sufficiently attractive.

---

[1] The requirements differ in the various classes of schools, those set for high-school teachers being considerably above those for teachers in the grades. A full discussion of the various requirements may be found in F. W. Ballou, *The appointment of teachers in cities*, Cambridge, Mass., 1915. Mention may also be made of the excellent brief discussion contained in Chapter IV of the Portland (Oregon) *Report of the survey of the public school system*, Yonkers, 1915.

[2] W. S. Monroe, *Measuring the results of teaching*, Boston, 1918.

It is unfortunately true in many cities that the scale of salaries in the school department has not kept abreast of that which exists in private employment. The median pay for public school teachers of all grades in American cities is less than twelve hundred dollars per year.[1] This is below the rate of wages earned by manual workers and far below the usual rate in any of the skilled trades or professions. The result is that young men and women who possess a high degree of mental capacity, ambition, and initiative are not entering the teaching profession in adequate numbers. Or, if they accept positions in the city schools, it is often as a means of earning money for further study or of employing their time until something better turns up. The turnover in the ranks of city school teachers — in other words, the replacement average — is high in comparison with that of the teaching staff in colleges or even compared with the skilled-labor turnover of well-organized business concerns. The difficulty encountered in obtaining good teachers is exceeded only by the



---

[1] In 1919 the National Education Association compiled and published a *Bulletin* (*No. 6*) on *Teachers' salaries and salary schedules in the United States* which showed the median salary rate for intermediate-school teachers to be $1,047 per annum. The figure is probably somewhat higher today than it was in 1919.

difficulty encountered in keeping good teachers. For both these difficulties there is but one remedy — the remuneration must be brought to a point where the city schools can secure and retain the degree of teaching skill and experience that they ought to have. Good pay and high standards are inseparable.[1]

But the injustice to the "poor teacher" is not the only thing that the community ought to have in mind. It should not omit sympathy for the poor pupils who will be poorly taught so long as there are poor teachers in the schools. For in the last analysis the quality of public education depends upon the teachers. Suitable buildings, a well-planned curriculum, and good textbooks all contribute their share towards the efficiency of a school; but these are inanimate things. Without capable and well-trained teachers they are not of much avail. Now effective teaching requires two attainments on the part of the teacher — a knowledge of the subject and an ability to import this knowledge to others. Both of these things are equally essential, and both are in large measure the result of training. It is for this reason that all the states and some of the cities maintain normal schools or teacher-training schools in which prospective teachers are educated in the art of giving instruction.[2] The universities also provide extension courses and summer instruction with the same end in view.

As respects teachers who are already in service, good training is to some extent a matter of capable supervision, and in the larger cities a great deal of emphasis is now being placed upon the work of the supervisors whose duty it is to help the teachers by suggestions and guidance. Even larger appropriations should be devoted to this work than are at present available. We are inclined to spend our school appropriations on buildings, books, supplies, and facilities for the pupils, and to feel that the community discharges its full obligation to the teachers when it pays them a living wage. But human knowledge and educational methods keep moving rapidly forward, and the teacher who is not enabled to keep close on the trail is sure to be left behind. Unless the teachers, therefore, are afforded the opportunity of being kept in touch with the latest and best methods in their respective fields, they become inefficient and unprogressive without knowing it.[1]

---

[1] To some extent a discrepancy in pay can be offset by a liberal system of teachers' pensions. Various schemes of pensioning superannuated school teachers are now established in American cities. They are described in Paul Studensky, *Teachers' pension systems in the United States*, New York, 1920, and in the Bulletin of the Carnegie Foundation, prepared by Clyde Furst and I. L. Kandel, on *Pensions for public school teachers*.

[2] F. A. Manny, *City training schools for teachers*, United States Bureau of Education *Bulletin No. 47*, Washington, 1915.

Another problem of school administration concerns the pupils and parents rather than the teachers. To what age should school attendance be made compulsory? In most of the states this age is now fixed at fourteen years (or grammar-school graduation) although some southern states still maintain the twelve-year limit. Many educators believe that even the fourteen-year limit is not high enough and are urging that it be raised. In some states a step in this direction has been taken by requiring that all persons under sixteen years of age who engage in any form of wage-earning employment must either present a certificate of graduation from grammar school or must attend continuation classes for so many hours per week. More urgent than any raising of the school age, however, is the need for more strictly enforcing the rules which now exist. In some parts of the country the present age-limit of twelve or fourteen years is poorly enforced, with the result that many thousands in the backward rural sections and in the crowded districts of cities are growing up in illiteracy.[2] This situation is likely to continue, despite the increased strictness of the laws, until school attendance officers are appointed in all school districts. In the larger cities such officials are now provided for, and in many of the smaller ones as well. The results are apparent in a larger and more regular school attendance.[3]

---

[1] The various means of improving the work of teachers are described in C. R. Ruldiger, *Agencies for the improvement of teachers in service*, United States Bureau of Education *Bulletin No. 3*, Washington, 1911, and in H. Updegraff's paper on "The improvement of teachers in service in city schools," printed in the *Proceedings of the National Education Association*, 1911, pages 433–445.

[2] According to the census figures, only one person in fifteen (above school age) is unable to write; but the experience of army officers with drafted men during the war showed that the proportion must be a great deal larger. The census enumerators take a man's word for it; the army authorities at the various camps applied an actual test. They found that about one man in every five was unable to write a simple letter of a dozen lines.

[3] C. M. Woodward, *Compulsory school attendance*, United States Bureau of Education *Bulletin No. 2*, Washington, 1915.

But we should not depend wholly upon the stern arm of the law and the vigilant eye of a truant officer as the sole means of getting pupils into school or keeping them there. When normal boys and girls dislike going to school, when they stay away at every opportunity, and leave school as soon as they can, there is reason to suspect that something is wrong with the school system itself. The whole problem of compulsory attendance is closely tied up with such matters as the nature of the studies, the quality of the teaching, the providing of specialized schools, and the division of the school course into grades. Only one-half the pupils who enter the elementary schools of American cities remain to the final elementary grade, and only one in ten reaches the final year of the high school. This high degree of mortality suggests not only that industry is a strong competitor with education but that the schools do not succeed in holding the allegiance of their pupils. The situation, however, is steadily being changed by various measures which are adjusting the schools more closely to the needs of their respective communities.[1]

Originally it was assumed that free education ought to be provided by the city through the elementary grades and no further. Then the proposition was broached, and in time found general acceptance, that the system of free education should include the high schools. Now it is proposed to carry it further by the establishment of junior colleges, and indeed there is some demand for full-fledged municipal universities. Junior colleges, with programmes which carry their pupils through the first two years of regular collegiate work, have been established in many American cities. Regular universities, maintained by the municipal treasury, are also being maintained in some of them, and their number will probably be increased as time goes on.[2] So we are face to face with the question: At what point in the educational process does the obligation of the city come to an end? There are state universities in most of the American commonwealths, and to the support of these institutions the taxpayers of each city contribute their share. But some states have many large cities, and the state university cannot be located within easy access of them all. Hence the demand that facilities shall be provided for free collegiate education at home. The junior college is merely a way station on the road to a full four-year college course at the expense of the municipality.

---

[1] The establishment of junior high schools, for example, is one of these measures. For a discussion of this subject, see T. H. Briggs, *The junior high school*, Boston, 1920.

[2] The largest of these are the College of the City of New York, the University of Cincinnati, Toledo University, and Akron University. It will be noted that three of these four are in Ohio.

The school and the public library

The public library is an institution of great educational value, and its relation to the schools ought to be more intimate than is usually the case. It is potentially a far more effective agency of public education than it has been made. The schools and the public library have the same general mission, which is the education of the whole community. The library, however, has by no means so fully appreciated the fullness of its responsibilities. Too often it is merely an ornate building with a miscellaneous assortment of books (mostly fiction) on its shelves. The authorities usually buy whatever their readers ask for, and rarely assume any real leadership in molding the tastes of the library's patrons. Its rules and regulations are sometimes needlessly strict; they place a damper upon the free use of the library facilities.[1] The tendency, moreover, has been to regard the public library as a place for adult readers primarily. But the way to enlarge this circle of adult readers is to bring them into touch with the resources of the library while they are young, and the public schools are the natural channels through which this can be accomplished. Were it not for the schools, there would be no readers for the library.

In well-managed public libraries a policy of coöperation with the schools is now being followed. Many of them have established juvenile departments in which an expert carefully chooses books that are likely to interest the young. Reading lists of interesting and timely subjects are also kept posted; the pupils in the schools are encouraged to use the library in connection with their studies; illustrated lectures are provided in the late afternoon hours and on Saturdays, and the whole atmosphere of the library becomes one of welcome to readers of every age. It should not be thought, however, that all municipal libraries are rendering this degree of service. The majority of them have not yet been shaken from their stupor. The reason, in part at least, may be found in the personnel of library boards, or library trustees, whether appointive or elective. These boards are composed for the most part of well-intentioned but easily satisfied men and women who are more concerned with the dignity of their work than with the measure of service rendered. Compare the progress in school activities during the past thirty years with that which has taken place in the public library administration! There is no comparison. The suggestion that library boards should be abolished and their functions transferred to the regular school authorities has much to be said in its favor, for the library and its branches are integral parts of the city's educational plant.[1]

---

[1] There are some cities, for example, in which the privileges of the "public" library are extended only to property-owners or to those who secure, on their applications, the signature of a property-owner.

Under ordinary conditions, how many hours of use does a community obtain from its school building in the course of a year? Five hours per day, five days per week, for about forty weeks in the year! That makes a total of about a thousand hours; a year contains more than eight times as many. When used for school purposes only, school buildings are empty seven-eighths of the time. But the cost of maintenance goes on all the time. School buildings are admirably suited for many after-school purposes; they are centrally located, well heated and ventilated, clean, and commodious. Why not make use of them outside of school hours? Many cities are now making use of them for evening classes, for public meetings, and for neighborhood recreation. The high schools in many cities have become evening social centers for the sections in which they are located. This means that the classrooms, assembly hall, and gymnasium are opened for lectures, entertainments, games, and dances, all under the supervision of officials (usually teachers) who are appointed and paid by the school board. The complaint is sometimes made that this wider use of the school plant is not education in the customary sense, but recreation or amusement, and that the taxpayers should not be required to pay for adult amusement under color of supporting a public school system. There is some force in this contention, but so long as the work is of value to the community and worth what it costs, the particular heading under which the money is expended does not matter a great deal. These evening activities are placed in charge of the school authorities as a matter of convenience and not because they are exclusively of an educational character.[1]

---

[1] This has been done, for example, in Indianapolis. Under the commission form of government, moreover, the schools and the public library are frequently placed under the same administrative headship.

The Gary system

Do we make sufficient use of the school facilities within the available school hours of the day? The usual school programme does not cover more than five hours, although there are eight hours between eight o'clock in the morning and four in the afternoon. In Gary, Indiana, a few years ago the school authorities decided that schooling, like labor, should be put on an eight-hours-a-day basis. Pupils were therefore kept at school from eight until four, spending half their time in the classrooms and the other half at vocational work or at organized play. By this two-platoon system the classrooms were made to accommodate twice the customary number of pupils. The Gary plan is based on the idea that a school plant should include a school, a workshop, a playground, a library, a gymnasium, and a community center all rolled into one and kept in use all the time. It takes into reckoning, moreover, the generally accepted principle that leisure and play can be made to serve the ends of education. Special emphasis is placed by the Gary plan upon letting each pupil follow his own line of interests both in the classroom and in vocational work.[2] The plan was given a trial in some of the New York City schools during Mayor Mitchel's administration, but it proved highly unpopular with the parents of school children, who objected to the practice of keeping the youngsters at school during the hours when they might be at home doing chores or running errands. Labor leaders also looked askance at the vocational aspect of the plan, believing that this embodied a scheme to get the children more rapidly out of the schools into the shops and factories.

The rise of vocational education

Mention of vocational training brings up a school problem of great importance. For some years the whole curriculum of the public schools has been in process of change. The training of the old-time city school was in large measure literary and intellectual, without any direct relation to the present or future interests of pupils. It was a heritage from a preceding generation in which education was the prerogative of the well-to-do, the privilege of the leisure class, designated to give culture and erudition. But inasmuch as nearly 90 per cent of all the pupils in the public schools go directly into some form of industrial or mercantile employment (not into the learned professions), it can readily be seen that a school programme of strictly cultural studies does not satisfy the needs of the modern municipality. Hence the demand for vocational education — for such study and practice as will connect the pupil directly with his future life work.

---

[1] C. A. Perry, *The wider use of the school plant*, New York, 1911.

[2] W. P. Burris, *The school system of Gary, Indiana*, United States Bureau of Education *Bulletin No. 18*, Washington, 1915.

In response to the demand for vocational studies, the old curriculum has undergone a radical transformation. Today it is the disposition of educators to challenge every subject to demonstrate its value. A subject which cannot demonstrate that it helps to fulfill some one of the recognized purposes of education is given a subordinate place in the curriculum or taken out altogether. In keeping with this attitude the vocational studies have come into great prominence during the past twenty years or more, for they are regarded as connecting the pupil with his future life work. Shop work, millinery, sewing, cooking, stenography, mechanical drawing, and a dozen other branches of vocational work have been brought into the school programme. They are crowding the older high-school studies, particularly the classical languages, into the background. Special schools of commerce and industry have been provided in many of the large cities, and special schools of agriculture in the rural districts.[1]

The school playground

The place for a playground is in connection with the schoolhouse, It is part of the educational plant. The boy without a playground is father to the man without a job. He is suffering exactly the same loss, the cutting of the main strand of his existence.[1] Yet it is only within recent years that school authorities, and the public as well, have come to appreciate the educational value of organized and supervised play. Recreation and play, when carried on properly, afford not only exercise and amusement, but education as well. Some useful lessons which cannot be taught in the classroom are learned by participation in organized athletics. Everyone realizes, for example, that play in which there is no leadership and no observance of rules is a very poor sort of play. It may give physical exercise in plenty, yet it satisfies nobody. Anarchy on the playground is no more satisfying than anarchy in other branches of human activity. Organized play is merely *government* on a small scale. The element of leadership, the discipline, the rules, the practice of obeying the umpire — they all suggest that officials, laws, government, and courts are essential to the best interests of the individual in the great interplay of life. To be of educational value, however, play must be organized, directed, and supervised. This means that the public playground, whether connected with the schools or located elsewhere, should be under the jurisdiction of the school authorities. It is not a park in the ordinary sense, and there is no sound reason for placing it under the control of the city's park department.

---

[1] No sensible person should regret that the schools have moved in this new direction; the only question is how far they ought to go. If the only purpose of education were to teach the art of earning a living, it would be another matter; but purely vocational studies do not afford sufficient scope for the attainment of the other educational purposes. Man does not live by bread alone. The cultural studies have their value, although this is often overlooked because it does not appear in plain sight to the naked eye. Even in the vocational school there should be a proper balance between the definitely vocational studies and the cultural studies.

Financing the schools

Public education in the United States has become enormously more expensive during the past twenty years. School buildings cost more to construct and maintain; the pay of teachers has been increased; the supplies used in schools are steadily improving in quality — and in price. The new methods of school organization and instruction, the wider use of the schools, the extension of vocational education, the providing of free textbooks, the progress of health work in the schools, the establishment of evening schools, continuation schools, vocational schools — all these things have caused the cost to keep mounting year after year. The public schools of the United States now cost the taxpayer more than a billion dollars per annum. That is twice what they cost ten years ago.[1] If the expenses double once more in the next decade, where will the money come from? The schools are not the only instrumentalities of public service. They must share the public income with many other municipal departments — streets, health, poor relief, police, fire protection, water supply, sanitation — all of which are clamoring for more money each year. It may be replied, of course, that the way to get more money for all of them is to keep raising the tax rate. This, however, merely betrays the existence of a common impression, which is that city tax rates have the sky as their limit. The truth is that when taxes on property rise above a certain point they are a deterrent to the erection of new buildings and check the industrial progress of the community. Within certain flexible limits a city has only so much money to spend.

---

[1] Joseph Lee, *Play in education*, New York, 1915, page viii.

Some of the money that is needed for the support of the public schools is supplied by the taxpayers of the city or school district, and some of it by the state. In many parts of the country the annual contributions of the state treasury toward defraying the cost of local schools is very large. In some cities the school board has independent authority to levy taxes up to a certain maximum, but in others it merely gets such portion of the regular tax income as the regular appropriating authorities may choose to give it. The chief argument for placing the appropriation of school funds in the hands of the city council or the city commission is that it unifies the local taxing power, making one representative body responsible for all municipal expenditures. But experience demonstrates that there are serious objections to the policy of requiring the school board to come as a suppliant before the group of politicians who usually compose the city council. Nothing conduces more surely to draw the schools into politics. The school board must play the game, as the councilmen understand it, or the money will not be forthcoming. The best policy, and the one which is now being followed by the more progressive cities, is to set a maximum limit within which the school board has its own taxing power.

---

[1] Allowance must be made, however, for the fact that the purchasing power of money has declined considerably during this decade. On this question of increased school expenditures there is an interesting article by Edwin B. Stevens entitled, "Can we pay for education?" in the *Educational Review*, Vol. LXIV, October, 1922, pages 183–195.

The rapid increase in the percentage of municipal taxes now taken by the school authorities has been the subject of much comment in business circles. The expenditure for schools is now the largest item in the municipal budget. School expenses have risen much more rapidly, during the past ten years, than the expenditures for police, fire protection, sanitation, or health. A billion dollars per annum seems to be a large sum for the country to spend on its schools; it is nearly ten dollars per capita. But it is only half as much as the American people spend each year upon tobacco, chewing gum, ice cream, perfumery, and cosmetics. Reckoning the total annual income of the entire population at about seventy billions, the cost of public education represents less than two cents out of every dollar earned. It is a fair statement, moreover, that the taxpayer comes nearer getting one hundred cents on the dollar for his outlays in the school department than in any other branch of municipal administration. Money for the schools will be forthcoming so long as people appreciate this fact. If present sources of revenue will not stand the strain, others must be found. There is no more profitable use to which the people can consecrate their public expenditures.

The public schools and democracy

In 1780, when John Adams drafted the first constitution of Massachusetts, he inserted a notable provision setting forth the relation of "wisdom and knowledge" to the maintenance of free institutions.[1] This relation was so intimate, he believed, that it should be the duty of "legislatures and magistrates" to bestow special care upon "spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people." In this Adams was right. No matter where one may go, in any part of the world, it will be found that political democracy and public education walk hand in hand. In despotisms one will rarely find a system of universal, free, public education; or, if it is found, we may be sure that the despotism will not last very long. Education is the friend of democracy and the foe of despotism. Indeed it can fairly be said that without a system of public education no democracy can ensure its own permanence. This is because the maintenance of democratic government depends upon the ability of the people to think straight and to see things clearly. The more political freedom you give a people, the greater is their opportunity for abusing it.

---

[1] "Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns . . ." — Constitution of Massachusetts, Chapter V, Section ii.

But someone may interpose to ask this embarrassing question: If education helps to make people more sensible in political matters, why is it that well-educated and intelligent people are often found among corrupt and selfish politicians, and that even college graduates at times become political bosses? The answer is that in this, as in other things, a general truth does not cease to be a general truth because there are exceptions to it. Many well-educated men are unable to earn a living, but would anybody argue that education, as a general rule, renders no aid toward gaining a livelihood? As well might one urge that newspapers render no service in disseminating the truth because they occasionally print lies. It is quite true that men are not politically wise in exact proportion to the extent of their education. The man or woman who is only a grammar-school graduate may have more political wisdom than the most finished scholar in the land. But this does not impair the fundamental truth that knowledge is preferable to ignorance in all countries, at all times, and in every field of human activity.

LXII. SOCIAL RESPONSIBILITIES: COMMUNITY PLANNING

1. THE NEWER CITY PLANNING[1]

By George B. Ford

President, Federated Societies on Planning and Parks

Today there are over four hundred American cities and towns, all with over 2,500 population, that have planning commissions. The number has increased with great rapidity during the last year or so. Today there are nearly six hundred cities and towns that have enacted zoning ordinances. This is a long step forward in city planning. There are already nearly two hundred cities that have made comprehensive city plans, and scores are at work upon them at the present time. From this mass of experience a newer and ever better method of city planning is being evolved.

The marked increase of late in city planning is undoubtedly due to the fact that the advantages have been so marked in the best-planned cities, such as Cincinnati, Chicago, Memphis, Springfield (Mass.), Flint, Milwaukee, Dayton, St. Louis, Buffalo, and Norfolk, that other cities are eager to enjoy the same advantages. In those towns, as in many others, citizens can point to their city plan as a vital thing that is serving not only as a chart to steer by, but also as a constant inspiration to worth-while accomplishment.

In other words, they are convinced that city planning pays for itself over and over again.

What city planning is

How does comprehensive city planning differ from what city officials have always been doing in taking care of their community's growth?

First of all a city plan does not duplicate the efforts of any city official, nor does it supersede them, but it does supplement them by bringing a new point of view and new approach to the direction and control of the city's future. It is simply a broad application of that common sense in planning improvements which the city officials have been showing, plus, first, wide experience in the solving of similar problems in a great variety of communities, large and small; plus, second, a scientifically worked-out vision of what the city should be like in the future; plus, third, the coördination of the whole plan with a long-term budgeted programme for its execution. It is a creative clearing house where all worth-while projects are amalgamated into a unified plan.

---

[1] Reprinted by permission of the American Civic Association from the bulletin of the same title published by the Association, May, 1928.

The city official normally works in the present, from day to day, looking only so far ahead as the limited time, snatched from his many prescribed duties, will permit. The city planner concentrates on the plan, and, from his experience with many other cities and building on a strong foundation of fact, he tries first to determine what the city should be like twenty-five years hence if it is to grow satisfactorily. He then works back from this practical ideal of the future city and determines just which of the public improvements should be undertaken each year over a period of years in order gradually to approach the ideal. Thus the city plan is the result of practical imagination, backed by extensive experience with the growth of municipalities, all of its phases being properly correlated and woven into a comprehensive plan with a budgeted programme. It is a scientific application of vision to the development of the city or town.

Nor does the modern city plan stop at the city limits. It stretches out into the surrounding territory economically tributary to the central city. For it is hardly logical, as experience proves so strikingly, to limit the planned community of the future to the arbitrary and often cramped limits of the present city. Thus have grown up the great "regional plans" of Buffalo, New York, Milwaukee, Los Angeles, San Francisco, Norfolk, Pittsburgh, Cincinnati, Philadelphia, Chicago, Dayton, and Washington, where the city's framework of thoroughfares, parkways, parks, and transportation lines has been extended throughout the environs of the city. The most recent development in this broader planning, as in the case of Trenton, N. J., or Chester, Pa., is the payment by the central city of the entire cost of making the regional plans, in view of the undoubted benefit that such a plan can bring to it. Regional planning is bringing about coöperation of a new sort between the central city and the outlying individual communities, even to the extent of the forming of county associations or federations of municipalities for common planning such as that about Pittsburgh, Buffalo, or Los Angeles, or as in Westchester County, north of New York City.

Regional planning is going still further in that it is helping to solve another serious problem that is vexing so many municipalities, the annexation of outlying areas. Dayton has recently pointed the way in this field by making, as a part of its city and regional plan, a thorough comparative and quantitative survey of the economic, social, financial, and political assets and liabilities that would affect the problem of annexation or regional coöperation for each of the forty-eight outlying unit areas that might be considered for annexation. This has resulted in the formulation of a definite programme of annexation which is to extend over a considerable period of years, and which is now being carried out by the county commissioners in collaboration with the city.

The objectives of city planning

What are the objectives of a city plan? What tests are applied to see whether it is worth while? The first should be, will it make the city safer and more healthful? The second, will it make the city more convenient, more economical in its functioning? The third, will it make it more livable, more beautiful? If it is worth while, the city will become a thoroughly satisfactory place to live in, to work and to play in. It will be self-respecting and hold up its head, because it is a place that every man, woman, and child can be proud of and can glory in; a place that everyone will justifiably boast about because he can back up his boast; a place so attractive that the passer-through and the visitor will also talk about it and wish to visit it again. There is nothing impracticable about this ideal town. If a plan does not help the town arrive at it, then there is something wrong with the plan.

The healthful town will have good sewer and water systems and adequate garbage and refuse disposal; plenty of open spaces and breathing-spots; parks, playgrounds, reservations, and squares. It will have plenty of light and air about the buildings, thanks to good zoning and housing codes. The safe town will make its streets and sidewalks safe both for the automobilist and the pedestrian. Its fire stations, hydrants, and police stations will be well distributed, and it will have an adequate building code.

The convenient and economical town will have effective means of transportation including well-located passenger and freight stations, wharves, trolley and bus lines. It will have a well-worked-out system of thoroughfares radiating in all directions and cross-connecting to the outlying sections. Its residence districts will be protected against the invasion of business. All its subdivisions will be controlled so as to avoid later expense to the city for replanning them. Its schools, libraries, parks, and playgrounds will be adequate and convenient to all users.

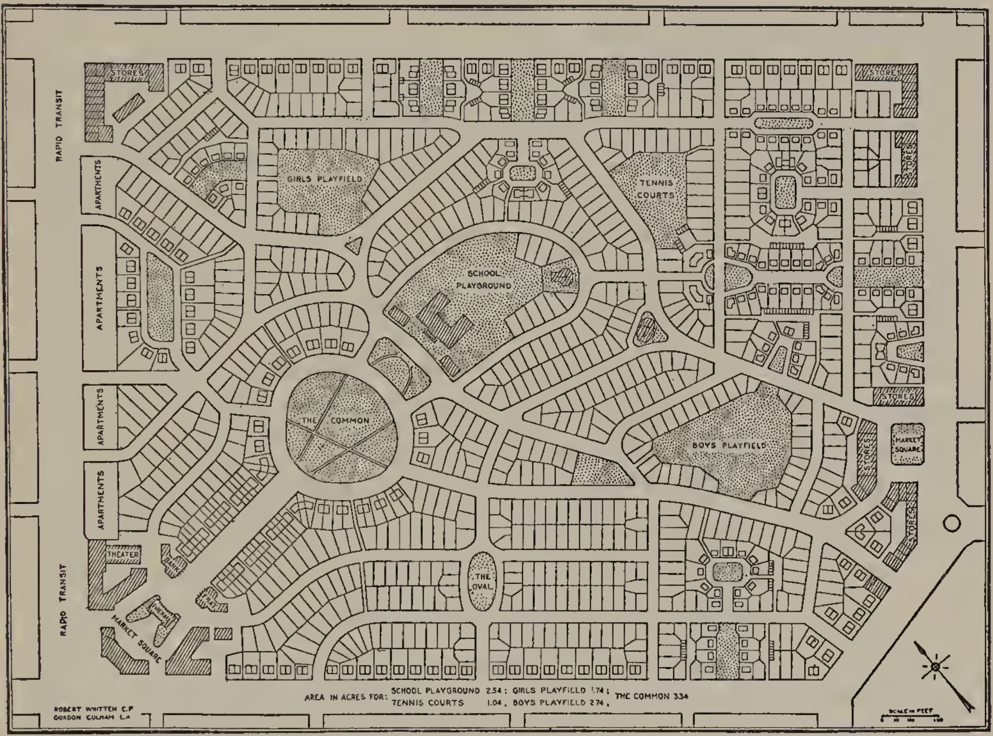
The livable and beautiful town will have well-paved, tree-bordered streets with constant variety in their width and character, with good-looking street-lighting fixtures and other fittings, with poles and wires removed wherever practicable. The water front will not be the town dump. Bridges will be objects of beauty, parks will be an improvement on nature, and subdivisions and public buildings will be a delight to the eye.

Town planning is good housekeeping on a larger scale. It means having a place for everything and everything in its place — orderliness instead of disorder and confusion. There is no more excuse for a town being untidy than for a home to be so.

The newer method in planning

1. The preliminary survey. — The newer city planning starts by striving to get a clear, unbiased perspective of the whole problem of the city's development. The first step is a sort of diagnosis, a taking account of stock, the making of what is called a preliminary or reconnaissance city planning survey. Obviously, the more patients the city doctor has, the better he can diagnose. The making of such a survey implies much concentrated, intensive study, the very thought of which has, unfortunately, often seemed too terrifying at the inception of most city plans. However, there is nothing so conducive to orderly thinking and to logical planning as taking the time and trouble at the start to get a clear picture of the whole situation and the relations of all of the

component parts. Such a survey serves to state exactly what the problems are and to lay down a definite programme of study for their solution. It concentrates the attention on the things which are vitally important and definitely eliminates all that are not essential to the problem. In other words, the specific programme of study which results from such a survey avoids much of the waste of time and money which used to go into the study of nonessentials in earlier city planning work. Modern city planning must be practical and efficient. If it is not, it is not worthy of the name.


STORES
RAPID TRANSIT
APARTMENTS
GIRLS PLAYFIELD
TENNIS COURTS
STORES
APARTMENTS
SCHOOL PLAYGROUND
APARTMENTS
THE COMMON
BOYS PLAYFIELD
STORES
MARKET SQUARE
APARTMENTS
STORES
STORES
THEATER
THE OVAL
RAPID TRANSIT
MARKET SQUARE
AREA IN ACRES FOR: SCHOOL PLAYGROUND 2.54; GIRLS PLAYFIELD 1.74; TENNIS COURTS 1.04, BOYS PLAYFIELD 2.74, THE COMMON 3.34
ROBERT WHITTEN C.P
GORDON CULHAM L.A
SCALE IN FEET

Courtesy of the Regional Plan of New York.

A NEIGHBORHOOD RESIDENCE UNIT

Note the location of community interests in the center, the winding, narrow interior streets designed to check speed, and the broad arterial highways. It is calculated that the street improvements of a 160-acre subdivision laid out in this manner would cost $400,000 less than in the traditional gridiron plan.

Another advantage of the preliminary survey is its educational and selling value. By its publication, with many accompanying maps, charts, and photographs, it shows the citizens concretely just what their planning problem is in all its phases, where the city stands relatively in each of these, how the making of a comprehensive plan is the only logical way of arriving at a successful solution of the city's problems of growth. In various cities, such as Worcester, Springfield (Mass.), Dayton, and Cincinnati, the preliminary survey so convinced the general public of the vital need of carrying through comprehensive planning that it has demanded it forthwith.

In present-day city planning, the qualified planner bases his plan on a thorough, quantitative knowledge of the actual facts and conditions which affect the growth of a city and its region. Nothing is left to guesswork. Yet he is discriminating, having learned by experience that it is a waste to amass many seemingly pertinent types of facts, as they have proved to be of no real value in city planning.

He next calls to his aid every ounce of imagination and inspiration of which he is possessed, in order to envisage the ideal growth of that city. Without this freeing of the designer's imagination, the planned city of the future, although most healthful, safe, and efficient, is liable to be humdrum and stereotyped, quite lacking in that personality and inspired quality which alone can engender real enthusiasm and love for the city. Then, too, many of the happiest suggestions will never see the light of day if the trained imagination of the designer is not given free play.

However, then comes the acid test. Each phase of the city's probable development is studied quantitatively and pitilessly to see if it is actually needed, if it would pay, and if it satisfies the three objectives of health and safety, of convenience and efficiency, and of livableness and beauty. Computations are made of its growth and of the proper distribution of its services and utilities, how large each should be, and when each should be installed to meet the city's growth. These findings are again checked by the test of common sense and good business to see if there is not some more practical or more economical way of arriving at approximately the same result. The outcome of this application of the scientific test to the freely imagined ideal city of the future is a comprehensive plan and programme in which is all the inspiration of the planner's vision, and yet from which have been eliminated all waste and non-essentials.

2. The comprehensive city plan. — The final stage in the process of

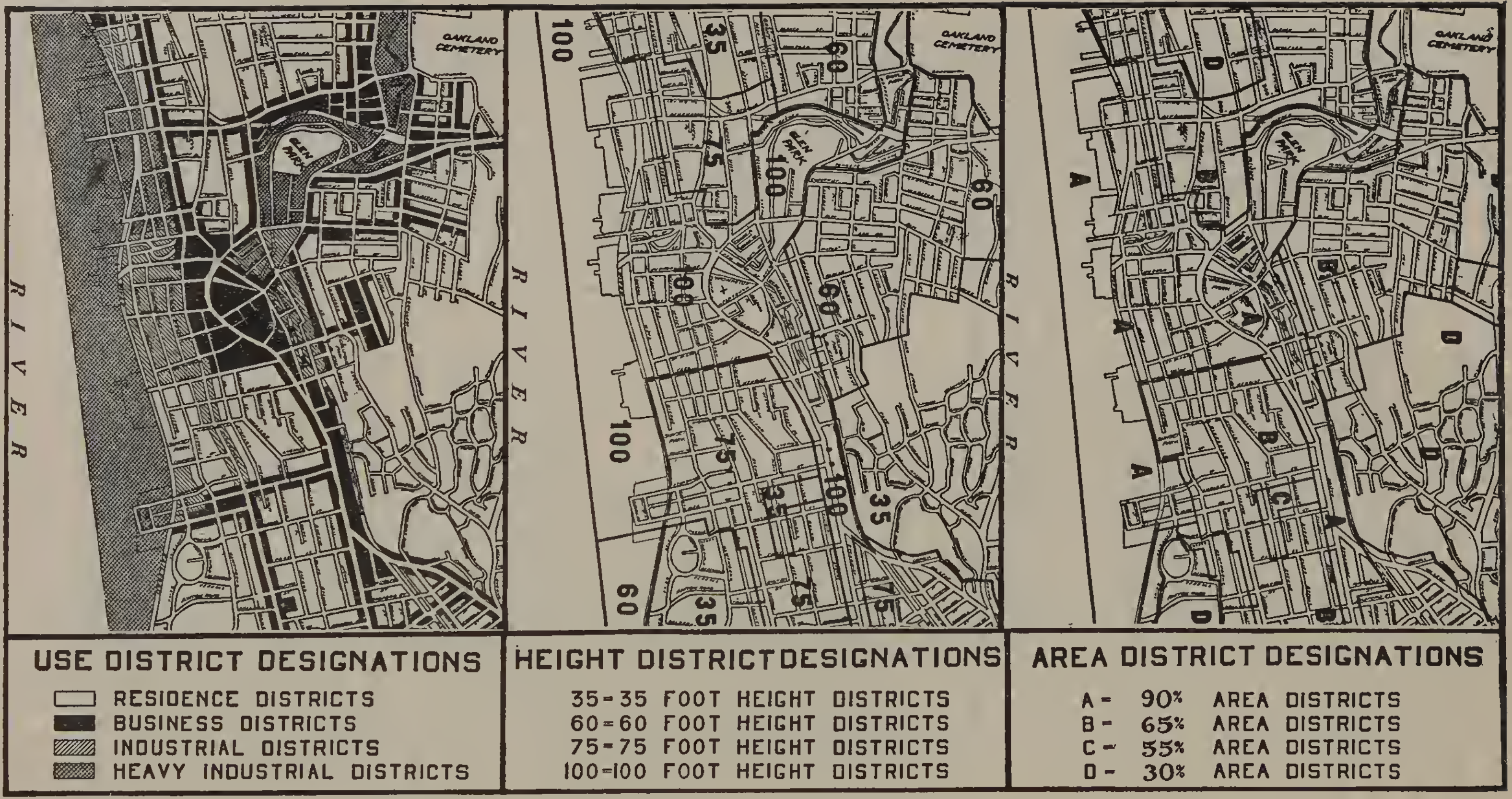
planning is the checking of the comprehensive city and regional plan to make sure that each individual recommendation fits into its proper place in the coördinated scheme.

The newer city planning report constantly reiterates the fact that the carrying out of the plan will not call for spending more money in any one year than the city would normally have spent and that the whole budgeted programme for a period of years is worked out on this cardinal principle. The very latest reports go still further, as in the case of Chester, Pa., or Port Chester, N. Y. They concentrate first on those matters which cost the taxpayer virtually nothing. Next they take up the things which would cost the city very little, and finally they present the inevitable improvements which the city must finance in any case. Perhaps, fourthly, they add a few inspired special improvements that would be most desirable whenever the city can see its way clear to undertake them.

Such a classification and arrangement help both the city official and the citizen to apply city planning by easy stages by proceeding from the least costly to the more costly. Thus they can gradually become educated as to the real value of the city plan and, perhaps, see sooner or later some of its possibilities for assuring order and economy.

Class 1. *Control of development of private property.* — The comprehensive plan then discusses, first, all phases of private development and its control by the city by means of ordinances or resolutions. Two-thirds to four-fifths of the land in most cities is private property. In fact, most of the growth of the city is directly due to private initiative and financing. Therefore the control over private development, which the city under its police power is entitled to exercise, can mean everything in the well-rounded development of the future city, a fact too often overlooked. Such control costs the city nothing except the trifling expense of drafting the essential ordinances.

Class 2. *Controlling public use properties and utilities.* — In Class 2 come the public utilities and the public services run by private groups, such as the various means of transportation, commercialized recreation, country clubs, institutions, and even cemeteries. The larger tracts so often owned by these groups can by their size and location either promote or cramp to an astonishing degree the growth of the city. They


OAKLAND CEMETERY
GLEN PARK
RIVER
USE DISTRICT DESIGNATIONS
RESIDENCE DISTRICTS
BUSINESS DISTRICTS
INDUSTRIAL DISTRICTS
HEAVY INDUSTRIAL DISTRICTS
HEIGHT DISTRICT DESIGNATIONS
35=35 FOOT HEIGHT DISTRICTS
60=60 FOOT HEIGHT DISTRICTS
75=75 FOOT HEIGHT DISTRICTS
100=100 FOOT HEIGHT DISTRICTS
AREA DISTRICT DESIGNATIONS
A - 90% AREA DISTRICTS
B - 65% AREA DISTRICTS
C - 55% AREA DISTRICTS
D - 30% AREA DISTRICTS

ZONING MAPS OF A TYPICAL CITY

A zoning ordinance is usually embodied in three maps establishing three kinds of restrictions. The *use district* map indicates the purpose for which property may be used; the *height district* map, the maximum height to which buildings may be erected; the *area districts*, the proportion of the lot which may be built upon. Carefully worded definitions of all of these are contained in the zoning ordinance itself. Real-estate owners no longer regard zoning as an irksome restraint but regard it as a protection to builders and a stabilizer of values.

often become barriers to growth that the city cannot jump over or flow around except with great difficulty. It is of the utmost importance that their development be controlled in the community's interest. This can often be done with little cost to the city, if the city takes its own comprehensive, far-seeing plan for growth to the private developers and shows them how it is to their advantage as well as to the community's to conform to the city's plan.

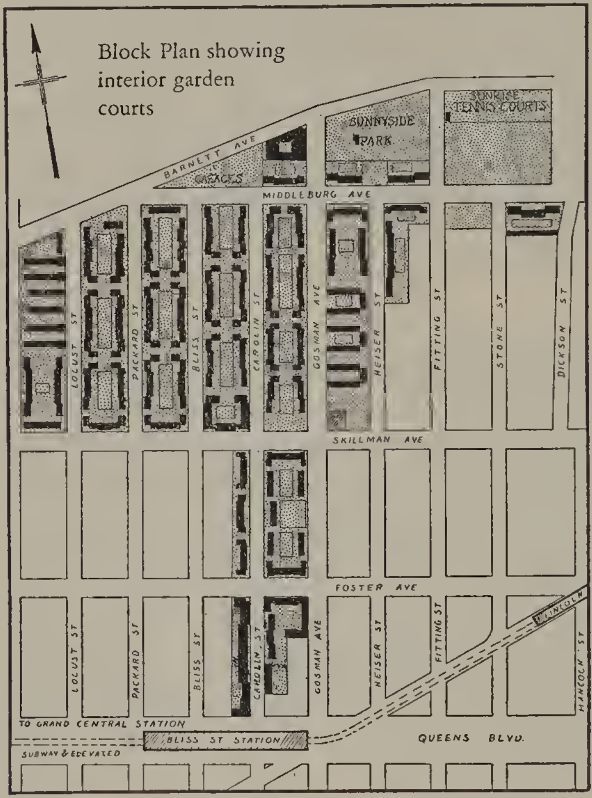
Class 3. *Public improvements.* — Then, finally, there are public improvements which call for the expenditure of public funds, things which the city would have to pay for anyway, but which the city plan arranges in an orderly budgeted programme of procedure.

Control of private property

1. Zoning. — In the control of private development the greatest service which the city plan renders the community is the assurance of orderly and appropriate growth in the character and intensity of the use of property. This is largely what is popularly known as zoning. If done wisely and logically, there is probably no one thing that the city can do which will have as much effect in assuring a desirable future as zoning. Through zoning, not only the community as a whole but each individual acquires a real protection against the harmful development of property. The experience of the six hundred zoned municipalities and the testimony of numerous realtors and others are evidence that zoning pays, both collectively and individually, so much so that, throughout the country, whenever a city has enjoyed zoning protection, it tends to demand more zoning, more stringent protection. The most striking result of this is the constant increase in the required sizes of yards and courts and the corresponding decrease in height limits.

It is natural that zoning should so often have been the first phase of city planning undertaken, because it makes a big showing for very little cost. However, this tendency to begin with zoning alone carries with it a real danger. In at least six municipalities that enacted zoning ordinances a few years ago, present comprehensive planning is necessitating a complete readjustment of the zoning map, with its consequent bad effect on the public. In the newer city planning this mistake is being avoided.

2. Fire limits and building codes. — Next to zoning comes the establishment of fire limits, that is, the creation of districts within which all future buildings must be of fireproof or fire-resisting construction. Then a building code should be adopted to assure safety from fire and poor construction. Obviously these things accompany zoning and should harmonize with it.


Block Plan showing
interior garden
courts
BARNETT AVE
GARAGES
SUNNYSIDE PARK
SUNRISE TENNIS COURTS
MIDDLEBURG AVE
LOCUST ST
PACKARD ST
BLISS ST
CAROLIN ST
GOSMAN AVE
HEISER ST
FITTING ST
STONE ST
DICKSON ST
SKILLMAN AVE
FOSTER AVE
LINCOLN
HANCOCK ST
TO GRAND CENTRAL STATION
BLISS ST STATION
SUBWAY & ELEVATED
QUEENS BLVD.

Sunnyside Gardens Development of the City Housing Corporation, Long Island City, New York

3. Housing and health ordinances. — Also hand in hand with zoning go the various ordinances and codes controlling tenement houses, health, sanitation, and smoke. No city can be truly healthful, or even safe to live in, unless it has adequate laws of this type. If there is any one fact that has been strikingly brought out in the recent investigations and hearings of the New York Tenement House Law Revision Commission, it is that tenement house laws are vitally essential in any city or town, and that control over light, air, privacy, and fire-protection should not be confined to tenement houses but extended drastically to all types of living quarters. All dwellings should be protected against the stupid offenses against health, safety, and privacy which many house-owners make frequently, if unwittingly. In any case, health and safety ordinances assure a protection out of all proportion to any cost they may be to the organized community.

4. Billboard and sign restrictions. — Advertising signs and billboards have come most notably under public control within the last year or two,

especially in Massachusetts, where the State Highway Commission, backed by the legislature, has gone a long way toward rendering its highways both safe and attractive. It is a precedent that is certain to be followed throughout the country.

Again, there are various communities which, within the last few years, by changing the character of their principal business streets, have been transformed from slipshod, disorderly, small towns into dignified, clean-cut, little cities. Their simple expedient cost the cities nothing. They refused to allow advertising signs and all other unwarranted encroachments to project over the sidewalks. The National Association of Real Estate Boards has recently endorsed this idea. It is astonishing what an enormous difference this most obvious remedy can make.

5. Control of subdivision platting. — Finally, there are the subdivision plats, the accretions by which the city and its region grow. Until lately, most cities have had little, if any, control over these plats where the whims and caprices of individual subdividers have run riot over the map, and have resulted in a labyrinth of narrow streets, impossible grades, absence of connections between streets in surrounding plats, lots often too small or badly shaped, all of which is a distinct handicap to the municipality. Communities in the United States spend an annual total of millions of dollars in rectifying these mistakes of haphazard street layout, most of which could have been avoided entirely if the city had compelled each subdivider in the first place to conform to a comprehensive city plan and standards.

Of the various state laws giving cities control over such plats, the recent laws of New York State are by far the most striking. They have, in fact, been utilized in the Standard City Planning Act prepared by the Advisory Committee on City Planning and Zoning of the Federal Department of Commerce. They give local planning boards drastic control over subdivision layouts and new building within the bed of mapped streets. However, these laws, like most others of the sort, declare that a municipality must first make a city plan and, in particular, locate and determine the eventual size of all radial and cross-connecting thoroughfares which it will need for many years to come. In other words, they assume that it is impossible to make the control of subdivision platting mean very much until a city has worked out a skeleton thoroughfare system to which each individual plat can be made to conform. When such a plan does exist, however, each subdivider, as he develops his own plat, will donate to the city any portions of the proposed thoroughfares that happen to lie within his plat. By this process, in one year, Los Angeles, city and county, received as a gift from over a thousand subdividers about one hundred and twenty-five miles of the city's proposed thoroughfare system, all in streets one hundred or more feet in width.

In general, controlling private development is the most profitable thing that a municipality can do, but, of course, there is great danger of overdoing it, and it is the easiest thing in the world for officials to become dictatorial and autocratic. If, however, the officials stick to the principle that all control must be of vital benefit to the whole community and must work the least possible hardship to individuals, there is little danger of the city's action being set aside by the courts.

Control of public properties and utilities

1. Railroad control. — The second field of action of cities and towns is the control of public utilities and services and the public use of property in the community's best interest. This again can be of great advantage to the public at little, if any, cost to the taxpayers. Railroad grade crossings, with their accidents and delays, networks of railroad lines crisscrossing through the city, badly located passenger or freight stations, freight congestion in the heart of the city due to the lack of by-passes — all present serious problems in many cities. Various American cities that have discussed their railroad problems with the railroads for many years without getting anywhere have recently studied the railroad situation comprehensively as a part of the city plan and, as in Louisville, Cincinnati, Dayton, Memphis, and Elmira, have succeeded in solving it in a way satisfactory to all. Furthermore, the work is going ahead with a relatively small part of the total cost falling on the taxpayer, and in each case it is felt that the broad-gauge approach of the city plan was what finally got results.

2. Transit control. — Transit problems have been worrying cities for many years. Again, in the same way, cities like Worcester, Springfield, Memphis, Dayton, and Pittsburgh, have at length worked out a satisfactory solution of their trolley and bus problems as a part of their

general city plan, and at strikingly small expense to the city in each case. The city's own scientifically worked-out plan convinced both the public and the utility company by its inevitable logic.

3. Water-front control. — When it comes to the commercial use of the water front, cities are now controlling private development by zoning, fire limits, and other code limitations, and also by providing special access and services wherever the city plan shows that such development is desirable. Thus, entirely apart from any public ownership of the water front, the city is effectively directing commercial water-front development, as a part of the city plan, in places like St. Louis, Cincinnati, Toledo, Pittsburgh, Chicago, Buffalo, and Boston.

4. Locating aviation landing-fields. — Aviation is now with us as something active and as a growing concern to the city plan. A large proportion of the air fields of the future will be privately owned. The location, size, access, and layout of these fields will be of great importance to the community. It is highly desirable now to determine and feature the best air-field sites before it is too late. They will be absorbed and built up for other uses unless earmarked early. Such sites have been earmarked in various city and regional plans, such as those for Norfolk, Trenton, Buffalo, and Dayton.

5. Commercial recreation control. — Commercial recreation is an important and rapidly growing factor in almost every community. The larger tracts for recreational use, such as amusement parks, ball parks, and race tracks present serious problems of location, size, and access. If wrongly located they can be a distinct detriment to the community by harming their surroundings or by blocking logical growth. That is why in all recent comprehensive city plans their location is being effectively controlled by zoning and the determination in the city plan of sites best suited to such uses. Cleveland has some of the best examples of the right way to do it.

6. Sports club control. — Golf links, polo field, athletic fields, and yacht landings all present similar problems of location, size, and access. They again are being controlled in recent comprehensive plans by zoning and otherwise.

7. Institution and cemetery control. — Welfare and penal institutions and cemeteries often block the logical growth of cities by being

wrongly located and thereby presenting a distinct barrier over which the city cannot jump.

8. Public utility control. — The same thing is true to a great degree to the control which the city exercises over the corporations which furnish electric light and power, gas, steam, and telephone and telegraph service. In many cities today the location of the plants and yards of the various utility companies is being effectively controlled by zoning and otherwise as a part of the city plan. The burial of wires or their removal to the rear fence-line has become a much appreciated part of the city plan.

In general, the city's control over the private development of public use properties is of the greatest importance to the community, and if city planning goes no further than to lay out a comprehensive chart by which to steer the development of such, it has already paid for itself many times over in the orderly and economic growth which it can assure the community.

Planning public improvements

1. Traffic control. — Finally, there remain the various public improvements that the taxpayer must pay for, for just about so much has to be done each year in every community to take care of growth, or even of the wear and tear. Street paving wears out and must be relaid. Traffic gets too heavy for the narrow thoroughfares, and people complain of accidents and delays. The new part of the town that is developing so rapidly is accessible only by a roundabout route. About the least expensive thing that a city can do is to control traffic, but here, again, many communities have run wild in their enthusiasm and have spent thousands of dollars for traffic lights and beacons on streets where most of the time there is only a scattered traffic. In various cities, such as Pittsburgh, Cincinnati, St. Louis, Springfield (Mass.), or Los Angeles, a scientifically worked-out scheme for the handling of traffic as an integral part of the city planning programme serves to postpone for a number of years costly street or roadway widenings or the cutting through of new streets.

In the same way, in various cities nowadays, such as St. Louis and Cincinnati, paving programmes are being linked up with city planning programmes so that paving will follow the order of urgency of development of thoroughfares as calculated in the planning study.

2. Thoroughfare systems. — Several hundred cities and towns have worked out thoroughfare and major street plans extending well out beyond the city limits. They range from the broad, concentrated, superhighway plans of Detroit and Providence to the more spread-out plans of Norfolk, Memphis, Cincinnati, Minneapolis, Dayton, Milwaukee, Springfield (Mass.), Buffalo, Worcester, Los Angeles, or Trenton. However, in every case future growth has been discounted and the distribution, location, size, and date of improvement of the thoroughfares system have been carefully calculated in the same way as are sewer systems and water systems.

In most of these plans enough width has been allowed to provide for trees and grass strips, which mean so much to comfort and enjoyment and yet which cost so little. More than that, every effort has been made to preserve intact the older streets, especially those with any charm, as of fine trees, and to avoid the expense of street-widening whenever it might be cheaper to cut through a new relieving thoroughfare. This is particularly true where the new street could cut through the middle of deep blocks, thereby creating new frontages, these new assessable properties often paying the cost of the improvement. In fact, it has become a test of good up-to-date city planning to see whether a proposed public improvement can be adjusted so as to pay for itself by the increased property values which it creates. A particularly striking example of this is being worked out at the present time in Poughkeepsie, N.Y. There a citizen has straightened out the New York–Albany Post Road, which had a bad jog in the center of the city, by cutting through the middle of two very deep blocks. He has retained all the new frontages for the quarter of a mile on each side of this realignment and is developing it as one harmonious architectural scheme. He is thereby making a new business center for the city out of whole cloth and is creating the highest land values of the city in what a few years ago were deep, useless back yards.

The town of Montclair, N. J., has recently made a complete thoroughfare, parkway, park, and minor street plan for the five hundred remaining undeveloped acres within its borders. The plan was arranged not only in the community's interest but so that each tract could be developed separately by the owner in a way that would make it of distinct advantage to him to conform to the town plan. Then, as a result of a series of conferences between the town and the property owners, all agreed to conform to the town plan. What is more, a number of property owners have since come to the town board and thanked it for giving them schemes for the layout of their property which they admit were better than anything which they had thought of themselves.

3. Public waterway development. — The public development of commercial waterways has been going on apace of late and, thanks to the activity of the Secretary of Commerce, is bound to have a big development in the future. Cities like Baltimore, Savannah, Mobile, Buffalo, and Houston are today putting into effect outstanding water-front projects that are bound to mean a great deal to the future of the city. In Albany, N.Y., and Richmond, Va., by taking thought these inland cities are turning themselves virtually into seaports, and they did it by first making an exhaustive economic and engineering survey wherein they determined in detail just what the effect of their ports would be on the future community. In each case they presented so convincing a case to the government that it has proceeded to collaborate in the improvement.

4. Water and sewer systems. — The municipal development of water-supply, freshet-control, and sewer systems is also greatly helped by the city plan, for within the last few years city engineers and commissioners of public works have often testified to the fact that the existence of a city plan, including zoning, makes it possible for them to calculate sewer and water systems far more effectively and often at a real saving to the community in the lesser allowances that have to be made for unforeseen contingencies and the more exact estimates of run-off and water consumption.

5. Tracts for public uses. — Tracts used or reserved for water supply, sewage disposal, garbage and refuse disposal, town forests, or municipal aviation fields are one and all parts of the modern city and regional plan. Experience is proving that the more comprehensive data and forecasts of the future which the newer method of city planning assures serves to check the recommendations of special outside studies on these matters and often to suggest real improvement in the community's protection.

6. Parks, playgrounds, and parkways. — What is true of reservations is also true of parks, playgrounds, and parkways. By the older method, parks and parkways were laid out by and for themselves. The newer way is to calculate scientifically their location, size, and date of undertaking, all as a part of the city plan, so that they will permanently and effectively serve residential districts instead of being buried in business or industrial districts, and so that the greatest amount of assets will accrue to the community for increased property values created by the improvements themselves. The United States is studded with beautiful examples of such systems, as in Minneapolis, Kansas City, Cincinnati, Denver, and Westchester County, N.Y., where the system is more than paying for itself in the increases in assessed valuations that it has created.

One of the most interesting phases of recent park development is the effect which a comprehensive park and parkway system in a city plan can have on the public, when proper publicity is given to the plan. For example, in Springfield, Mass., the park phase of the city plan has so fired the enthusiasm of a number of the owners of the land which lies within the proposed park and parkway system that they have offered to give, or bequeath, the desired land to the city, and, as a result, the city is actually acquiring a large part of its proposed plan for nothing.

7. Reserving public properties in subdivisions. — However, what is more interesting still is the fact that the more canny of the speculative real-estate subdividers are beginning to realize that the provision of public parks and building sites within their larger subdivisions actually pays. The other day, in Englewood, N.J., one of the most successful of the New York real-estate developers, a man who is famous for driving a good bargain, presented the town board with his layout for one hundred acres. The town authorities, at an evening conference, proceeded to show him how, from the standpoint of their town plan, they needed a park and a playground and a school site and a fire station site within his property. By half past two in the morning he finally agreed to give to the town eight central acres of land for these public purposes and, in addition, to sell no lot less than sixty feet wide and to create no street less than sixty feet wide, and then in his full-page advertisement, which appeared in the newspapers shortly afterward, he proclaimed, as one of

his best selling points, that this land had been donated to the town. If this could be made to appeal as a good business proposition to such a wary developer, there can be no question that in the majority of cases a similar donation would be profitable to the subdivider as well as of untold advantage to the residents.

8. Schools. — In locating schools the city plan is proving of inestimable value. A mayor of a Massachusetts city made the statement publicly that the city plan had saved the city nearly a hundred thousand dollars on the purchase of one school site. An excellent school board had taken an option on a site for an important school, and, from all the data a school board could be expected to have, they had chosen their site most wisely. However, the city planning calculations as to location and size of lot and as to date of undertaking, all looking well into the future, showed that the site chosen would eventually be at the junction of two important thoroughfares carrying transit lines and in the heart of a future business center. The city planning board found a larger and permanently useful site near by, just off the eventual thoroughfares and in the heart of a permanent residence district, at enough saving to pay the entire cost of the city plan several times over. It is true that in most of the cities where modern comprehensive city plans have been made the school boards have found it decidedly to their advantage to work with the planning board in following a coöperative programme for determining the location, size, time, and date of undertaking of school-site and building improvements.

9. Fire stations. — The same is equally true of fire stations, so that fire commissioners are likewise finding it to their advantage to work with the city planners in developing their programmes of expansion.

10. Public markets. — In communities where there is a demand for public markets — wholesale or retail, or both — the city plan is able to be of real service. Perhaps the most striking example of this is what is happening today in Washington, D. C., where the old wholesale and retail center in the triangle between Pennsylvania Avenue and the Mall is being displaced by a great group of Federal buildings. A searching economic survey was made of all the factors affecting the handling, consumption, sources, and routes of food-stuffs in and around the city, together with a thorough study of the trends of growth of all sorts as

affected by the city plan. The result is the layout of a model wholesale and retail market center combined with an industrial, business, and residential development in the one location, near the Union Station, that will best meet the future needs of the city. The new north and south wholesale food terminals in Boston and the new central public retail market in Norfolk, Va., are probably the most outstanding recent examples of their respective classes.

11. Public architecture in the mass. — The country has been blessed of late years with a number of examples of attractive and often beautiful public buildings, of which we have every reason to be proud, but unfortunately most of these buildings are isolated and so set that they rarely create the effect that they should. By contrast, the civic groups in Cleveland, Denver, Springfield (Mass.), San Francisco, and the very recent one in Winnetka are most impressive. One has only to see such groups as these to realize how public and semipublic buildings can gain by proper grouping, for unquestionably the combined effect of such a group is far more striking than even the sum of the separate effects of isolated buildings, no matter how good the latter may be in themselves. A civic group, such as those planned for Cincinnati, St. Louis, Dayton, Chicago, Buffalo, Worcester, Minneapolis, Springfield (Mass.), Milwaukee, or Norfolk, does not mean the expenditure of more money than the city would have spent on the individual buildings, but it does mean the application of forethought and imagination to the location and design of public buildings and a firm adherence to the plan. One of the most inspiring examples of such grouping is seen in the new parkway of Philadelphia from the City Hall to the new Art Museum, but the great outstanding example that comes first to the mind is that of Washington, which we all love to visit because the sheer beauty of its buildings and its plan so thrills us.

12. Art juries. — At least twenty cities in the United States, including the largest, have found that the best way to assure civic beauty is to create art juries or art commissions of especially qualified men, which must pass upon the design and appearance of all public buildings and structures, to determine whether they are artistically appropriate or not. The results show that the art jury principle cannot be commended too highly. In fact, it has been carried of late into many sub-

divisions, the most notable being Palos Verdes, in California, where such a jury must pass on every structure erected in the community.

13. Private architecture in the mass. — Nor need this attractiveness of appearance be confined to public buildings. Whole streets can be made harmonious and interesting by proper planning and by giving thought to preserving interesting silhouettes and sky lines and harmonious form and color in the buildings. In many of the European cities that we so enjoy visiting, these principles have been carried to their logical conclusion. The appearance of the whole city is controlled to keep it harmonious and attractive throughout. The citizens are convinced that it pays — that it actually brings paying visitors in large numbers and induces many discriminating people to settle there. Our laws hardly permit us to exercise such arbitrary control, but we can go far toward approximating its results by the encouragement of street associations for mutual action and by insisting everywhere on tree and grass borders and well-designed and well-located street fixtures. Santa Barbara, in its recent rebuilding, and the above-cited instance in Poughkeepsie evidence strikingly the charm of harmonious street design.

The latest development is the creation of an advisory council of architects to pass on the elevations of private buildings at the time plans are submitted to the building inspector. Such a council, of course, has no legal status or power, but it does three things:

First, it brings the architects together in a responsible relationship to consider architecture from the community point of view. This is bound to give the architects themselves a new conception of their individual jobs.

Second, it makes the builders realize that there are standards of taste and that good taste costs no more than bad.

Third, it awakens the public to the fact that private buildings make or mar a city more than public buildings, and that good taste in architecture is something which can be cultivated.

Most fortunately, the idea which was prevalent only a short time ago among American city officials and business men, that city planning was merely city "prettifying," has passed, and today the sensible citizen is demanding that his city or town be made attractive as well as healthful, safe, and efficient. The interesting part of it is, he is finding that beauty is mostly a matter of good taste and imagination, and, to his surprise, it does not actually cost any more than commonplaceness and ugliness. Surely there can be no question that a beautiful city is far more of an inspiration to its citizens than a plain city. It is hard to keep up one's enthusiasm for a commonplace and rubber-stamped community, but when a good city plan has conserved and developed the unique personality of a city and glorified it with beautiful buildings and settings, it is bound to serve as the rallying point for civic pride and civic spirit.

The comprehensive city and regional plan

In the newer city planning, all of these various types of community improvements are studied together, side by side. There is a constant give and take among them, so that each will be effectively related to all of the others, and so that no one will be played up unduly at the expense of others. They are all woven together into a completely correlated whole, which becomes the comprehensive city and regional plan. In this plan all of the proposed improvements are arranged in the order of their relative urgency, even to the point of computing the approximate date when each improvement must be undertaken. Cincinnati has pioneered in going one step further, for there the whole comprehensive city plan, with all its recommendations, has been officially adopted by the city. Nor can there be any departure from it except with the approval of the nonpartisan City Planning Commission and a two-thirds vote of the City Council after public hearing. If the Planning Commission objects, it requires a three-quarters vote of the City Council to override the veto. This gives the plan a continuity and stability that is of the greatest value.

It remains for the city authorities to coöperate in carrying out the city and regional plan with surrounding county or municipal authorities and with school, library, park, transit, and other such local boards, as is being done so successfully in Cincinnati, Detroit, Buffalo, Los Angeles, and Milwaukee. In all cases of effective coöperation, the city is conducting a broad-gauge campaign of education, with the result that interested citizen bodies are collaborating whole-heartedly with the authorities in enforcing and preserving the integrity of the plan.

However, the great question is, How is the carrying out of this city plan going to be paid for? Many contemplating city planning have been frightened into inaction by the huge bond issues that have resulted from city planning in some few cities. Frankly, the large, all-inclusive city planning bond issue is justified in only two cases: first, where a city is so far behind in its public improvements, through long years of parsimony or neglect, that it has to pay for its dereliction and make up for its deficiencies even to bring the city up to normal. The other case is where a city is so lethargic or so unstable, so lacking in continuity of policy, that the only way it can get public improvements across and the only way it can be at all sure of their being carried through to completion is to put on a great "hurrah-boys" campaign and jam the big programme through while the excitement is at white heat. However, in the normal city more reasonable methods are unquestionably more practical and effective, and the present-day science of city planning is showing in an illuminating way what those methods are.

The long-termed budgeted programme

The new method of executing the city plan consists primarily in a long-term budgeted programme, such as was originated in East Orange about six years ago and is being carried into effect today successfully by such cities as Detroit, Cincinnati, White Plains, and Trenton. In each case all of the individual recommendations of the complete city plan have been arranged in the order of their relative urgency and so distributed year by year that the amount which the city has to expend in any given year will not make the city exceed its borrowing capacity or a normal tax rate. The result should be that at the end of a period of ten, fifteen, or twenty-five years, as the case may be, the plan would have been entirely carried out. The city would have kept up with its growth in a most effective manner and grown in an orderly way without any abnormal strain on the treasury or on the taxpayer. In Cincinnati and Detroit they are reviewing the long-term budgeted programme each year in view of possible changing conditions and making minor adjustments while preserving the continuity of the general programme. In this budgeted programme thorough allowance has been made in the computations for the maximum local assessment of benefits consistent with the public good, for the imposing of building-lines, and even for the occasional use of excess condemnation which has been employed of late so successfully in Rochester, N. Y. Cincinnati has gone even further and has coördinated with its own budget programme those of the county authorities as well as of the school, park, transit, and library boards.

At a first glance the city official might hastily conclude that such a programme would necessitate the expenditure of a lot of money and a marked increase in the tax rate. The contrary is true. If the city plan is properly made and budgeted, its execution does not mean any increase whatsoever over the amount which the town would normally have to spend to take care of its growth. There is no city or town that does not have to spend a certain amount each year to satisfy the inevitable need for improvements. The modern city planning method, with its budgeted programme of improvements, differs from the old hand-to-mouth method that most cities have followed in the past in that every permanent or temporary improvement which the city undertakes fits into its logical place in the orderly sequence of a far-seeing programme.

Unfortunately, it is true that many of the older city plans were often unnecessarily wasteful in their recommendations. In the earlier stages of city planning, many public improvements were proposed which the recent method of engineering checks and coördinated budgeted programme would have shown to be impracticable. Unfortunately, this wastefulness in the past has led some city officials to look upon all city planning with suspicion as just one more scheme for running the city into debt. City planning as it is practiced today does not merit this suspicion. Beginning some six years ago with the budgeted plans of East Orange, N. J., and Springfield, Mass., city planning has today become reduced almost to a mathematical formula and absolutely to a business basis.

Assuredly the newer city planning is alive and vital. It is good business. It gets results. It assures continuity. It is an application to city development of the same common-sense principles that the good business man applies to his own affairs.

In addition the best comprehensive city plans are characterized by —

1. A background of wide and varied experience with all planning problems.

2. An extension of the scope of the study to include all of the surrounding territory beyond the city limits that normally affects or is affected by the city.

3. An exhaustive collection and analysis of all essential contributory facts.

4. A thorough preliminary survey or diagnosis of the whole problem in all its relations.

5. The formulation of a specific programme of study from which all nonessentials are eliminated.

6. The application of all of the imagination and inspiration of which the trained planner is capable to the creation of the ideal city of the future.

7. Giving the acid test which checks quantitatively and mathematically each suggested improvement to determine if it is actually needed, if it satisfies the objective of city planning, and if it would pay for itself in the new values it would create.

8. The weaving together of all proposals that stand the test into one comprehensive and properly correlated city and regional plan.

9. The preparation of a long-term budgeted programme for the logical execution of the plan in a way that will bring no undue burden on the taxpayer at any time.

10. Shifting the burden as far as is practicable on to the benefited citizens by police power regulation, by local assessment, or by persuasion backed by convincing plans.

11. The official adoption of the plan by the city authorities.

12. Coöperation with other city and regional authorities and with interested citizen bodies.

Such a method of controlling the future is merely the logical extension to the city's development of the practical foresight shown by the telephone companies or by any successful industrialist, or even as shown by the city itself in making sewer or water plans. In each case they plan ahead because it pays and because it is found to be most wasteful not to forestall haphazard growth. In fact, there is probably no one thing that city or town authorities can do today that will have more effect on the future of the community than making and carrying out a comprehensive city and regional plan and long-term budgeted programme.

2. URBAN USES OF LAND[1]

By George M. Peterson
Research Staff, Committee on Bases of Sound Land Policy

If the importance of land is considered from the standpoint of number of people directly affected, urban uses are the most significant, because nearly three-fourths of the population now live in cities and towns. The proportion of the population living in urban centers will probably continue to increase for some time to come, and certainly the actual urban population will tend to grow so long as the total population increases.

In relation to total area, urban uses of land are rather insignificant. There are no complete statistics to show the exact amount or the value of land in cities or towns. Only about ten million acres, or one-half of one per cent of the total land area, is now used for urban purposes. The amount may be doubled or trebled if the population doubles, but even then it would not be a big fraction of the total area.

Land in New York City is valued at $6,800,000,000, or approximately one-sixth as much as all agricultural land in the United States. Land in New York and its environs is valued at approximately $9,200,000,000, or one-fourth as much as all farm land. It is fairly safe to estimate that the value of all town and city land exceeds that of all land used for agriculture and forestry.

We have at present only the rough gauge used by the Census Bureau to define the difference between urban and rural populations. Arbitrarily, regardless of density, towns of less than 2,500 are classified as rural, and towns of more than 2,500 as urban. If we picture a population of just under 2,500 occupying a section of a square mile of ground, the density might not be more than 4 per acre; but if we estimate it as occupying not more than a hundred and fifty acres, which is perhaps nearer the average, in buildings and attached tributary grounds, the density of a population classed as rural might come close to 20 to the acre.

Where these little towns with less than 2,500 people are scattered over a predominantly rural region, they are often comparatively isolated county seats and trading centers. But when they exist in the vicinity of growing cities, they are frequently, in effect, parts of urban regions.

---

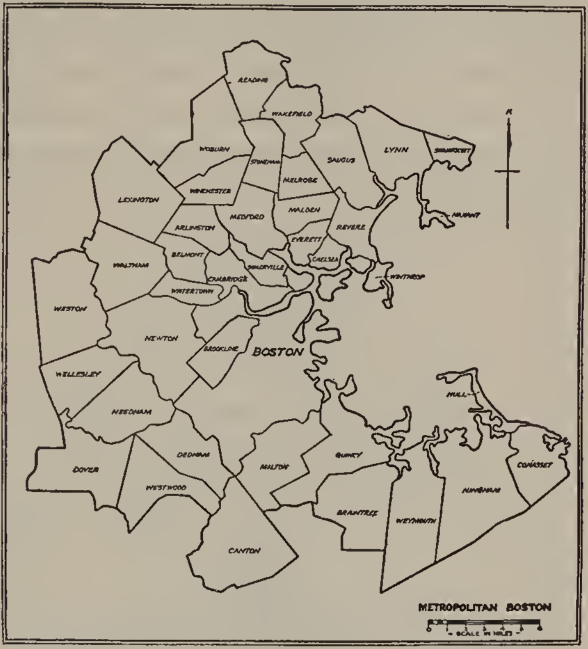
[1] Reprinted from a report entitled *What about the year 2000?* prepared by G. M. Peterson under the direction of a committee of the Federated Society on Planning and Parks, 1920, pages 48–72.

Urban regions

The most striking development in the twentieth-century occupation of land, which has only begun to unfold, is that of regional planning for great metropolitan districts. The processes of leaving to unguided individual initiative the building of new subdivisions to provide for growing populations, the casual or arbitrary arrangement of streets and avenues, the unquestioned use of old highways leading out of cities, or the geometric extension of city streets into new districts, with the haphazard use of abutting property, have proved unsatisfactory and unsuccessful methods of land utilization. The overlapping responsibility resulting from the outward push of city populations into territory already occupied by towns and villages has emphasized the need for coördinated plans for entire urban regions. We have made some experiments in regional control, but we have not as yet set up a very satisfactory regional government which articulates smoothly with constituent local town and municipal governments.

Los Angeles County has set up an official Regional Planning Commission which is appointed by the Board of Supervisors and which acts as an advisory body to the board in planning matters covering a metropolitan area of some twelve hundred square miles and including more than forty cities and fifty unincorporated towns with perhaps a thousand subdivisions outside of town and city limits.

In Massachusetts the state has conferred certain powers on the forty cities and towns in the region around Boston, which covers approximately four hundred square miles, with a population in 1925 of 1,800,000 people. Boston, with over three-quarters of a million, and Cambridge, with over 100,000, form the "hub," but of the forty towns only four report populations of less than 2,500. Taking the region as a whole, the average density comes to 4,500 persons per square mile or 7 per acre, which is less than the density of population in many of the villages under 2,500 in population. The size of this metropolitan district has increased with the growing population. The metropolitan sewerage commission, which was set up in 1889, covered only eighteen towns and cities. The Boston Metropolitan District today forms a planning unit covering some forty municipalities and is known as an *urban region* in spite of the fact that it includes some *rural land* and some villages classified by the census as rural.


READING
WAKEFIELD
WOBURN
STONEHAM
SAUGUS
LYNN
SWAMPSCOTT
N
MELROSE
WINCHESTER
LEXINGTON
MEDFORD
MALDEN
REVERE
NAHANT
ARLINGTON
EVERETT
BELMONT
CHELSEA
SOMERVILLE
WALTHAM
CAMBRIDGE
WINTHROP
WATERTOWN
WESTON
NEWTON
BROOKLINE
BOSTON
WELLESLEY
HULL
NEEDHAM
DEDHAM
QUINCY
COHASSET
DOVER
MILTON
HINGHAM
WESTWOOD
BRAINTREE
WEYMOUTH
CANTON
METROPOLITAN BOSTON
SCALE IN MILES

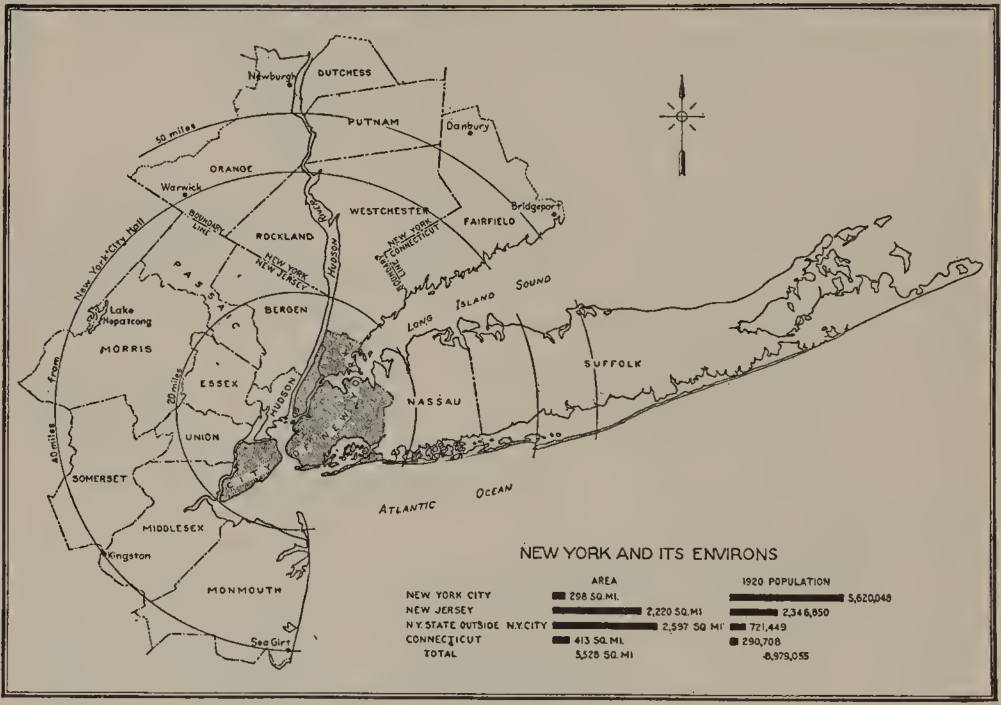
THE BOSTON METROPOLITAN REGION

The New York region

The studies of the Committee on the Regional Plan of New York have brought forth some very interesting data concerning the present and prospective distribution of the population within the New York region, which it is hoped will be used to guide the destinies of the region through some effective official governmental machinery yet to be devised. An area of 5,528 square miles was selected as the metropolitan district, covering more than four hundred incorporated and unincorporated communities. The total region is larger than the area occupied within the city limits of all cities in the United States over 30,000, but less than one-tenth of it is classified as built-up area. The heart of this district, including the five boroughs of New York City, and Hudson County and Newark, in New Jersey, contained, in 1920, 6,500,000 of the 9,000,000 population for the entire region. The density of population for the inside district was 18,638 per square mile, or 29 per acre, whereas in the next most populous section the density was a little less than 2 per acre, and in the outlying sections there was only one person to each three acres. The average density for the entire New York region only comes to a little over 2.5 persons to the acre.

Pearl and Reed have predicted that the 9,000,000 population in the

New York region will have grown to 29,000,000 by the year 2000, and have even ventured to predict a continued growth which in the year 2100 would reach some 35,000,000 people, with about 20,000,000 in the heart of the district. If, however, we assume a total population of 185,000,000 for the United States by the year 2000, and a stationary population of 225,000,000 which would be reached by or before the year 2100, the relationship of this predicted population for the New York region assumes an interesting aspect. In 1920 the population of the New York region was a little less than one-twelfth of the total for the country at large; in the year 2000 the predicted population for the region would be a little over one-sixth of the total predicted population. A hundred years later the increased population for the New York region would come to about the same ratio of the total population. If we accept these figures, the metropolitan region of New York will fill at a more rapid rate than the rest of the country until about the year 2000, when it may be expected to maintain a fairly stable ratio with the total population of the country.



Newburgh
DUTCHESS
PUTNAM
Danbury
50 miles
ORANGE
Warwick
WESTCHESTER
FAIRFIELD
Bridgeport
BOUNDARY LINE
ROCKLAND
NEW YORK NEW JERSEY
NEW YORK CONNECTICUT
HUDSON
New York City Hall
PASSAIC
SOUND
ISLAND
LONG
Lake Hopatcong
BERGEN
MORRIS
SUFFOLK
from
ESSEX
20 miles
HUDSON
NASSAU
40 miles
UNION
SOMERSET
ATLANTIC
OCEAN
MIDDLESEX
Kingston
MONMOUTH
Sea Girt
NEW YORK AND ITS ENVIRONS
AREA
1920 POPULATION
NEW YORK CITY
298 SQ.MI.
5,620,048
NEW JERSEY
2,220 SQ.MI
2,346,850
N.Y. STATE OUTSIDE N.Y.CITY
2,597 SQ MI
721,449
CONNECTICUT
413 SQ.MI.
290,708
TOTAL
5,528 SQ.MI
8,979,055

The New York Metropolitan Region

No one will deny that in the New York region there is sufficient room for a population of 35,000,000, for this would produce an average density of less than 10 persons to the acre; but if the present tendencies in the distribution of that population continue to concentrate in New York City, Newark, and Hudson County, we shall have ultimately a population of more than 54,000 per square mile of the metropolitan center, or 85 persons per acre; that is, a square of land about 209 feet by 209 feet must provide for at least 85 persons, including their share of space occupied by streets, parks, yards, stores, factories, and other land uses in the district. When all the industrial and commercial areas, all the open spaces for streets, parks, and public buildings, and all other general-service areas are considered, it may be seen that many acres would be occupied far more densely than at the rate of 85 persons.

Of course, such densities of population are made possible only by the high buildings, the double and triple levels for transportation, and all the modern methods of providing living and working quarters and circulation for congested populations. Visualize, if you please, what an average density of 85 would mean in this great city. Each person living in New York at that time would be obliged to claim his share of streets, parks, stores, theaters, art galleries, factories, garages, professional and business offices, and living quarters from a plot of ground equal to 10 by 50 feet, whereas each person now living in the same district must find all these provisions based on a plot of ground about three times that size, say 10 by 150 feet.

Decentralization tendencies

We may well ask ourselves whether or not all of the business which is concentrated in the heart of metropolitan centers will continue to be so located in the future. In the last century we have seen a phenomenal growth of the great department stores which in metropolises like Chicago, New York, and Philadelphia are visited daily by thousands of patrons. We are witnessing now a counter development (*a*) in surburban branch department stores and (*b*) in the little shops for men's and women's furnishings, either owner-operated or branches of large stores. The decentralizing tendency is apparent, even within the down-town areas of great cities, but it is not without the range of probability that these shops will multiply in outlying commercial centers. Already in the Country Club District of Kansas City there are several neighborhood shopping and marketing centers, housed in well-designed buildings, facing on tree-lined streets and near green open spaces, provided with convenient parking places for automobiles, and supplied with loading platforms in the rear for the handling of merchandise. Clothing, millinery, flowers, drugs, cosmetics, and service of great variety may be purchased in these centers, as well as staple groceries and perishable foods. Undoubtedly such decentralized shopping and marketing mean many thousand less trips "to the city."

The great numbers of neighborhood moving-picture halls must decrease the number of visits to the metropolitan theater district. It is impossible to predict just how far this tendency to carry merchandise and service to convenient outlying distributing centers may operate to reduce congestion in the central down-town sections of the great cities. But in planning for the future the tendency should not be overlooked.

The studies of the Committee on the Regional Plan of New York have disclosed the fact that there is already an exodus of certain types of manufacturing and fabricating which can be conducted more profitably in smaller cities and towns than in the center of New York. It is thought that when the full financial burden of operating a factory or manufacturing establishment in the heart of Manhattan is computed, many other industries will move to cheaper quarters. In the end, this will leave in Manhattan only those industries which find a corresponding financial benefit from the central location to meet the mounting costs of conducting business in expensive quarters. This tendency may exercise a profound influence on the distribution of the population of the United States.

It may possibly be that the tendencies of the last century to concentrate population in the heart of metropolitan districts will be modified to the extent of spreading the people more evenly throughout the larger urban regions, even though the total population in these regions continues to increase to the maximum predicted. On the other hand, the growth of population in the great urban regions may slow up more than is predicted by reason of the creation of new urban regions and new cities. With the increase of cultural centers in the country, the forces which have brought to New York in the past great numbers of country and small-town young people may operate to draw them in increasing proportion to other centers.

Intensive use of urban land

It may be that, as some of our architects and business men predict, New York, Chicago, and other metropolitan centers will increase the number and height of buildings, and, consequently, the value of selected plots of land, in order to house for business and for living quarters the growing population. On the other hand, as we understand more fully the economic results of intensive use of urban land in a country where the supply of land for urban uses is certainly not limited, our populations may tend to spread over larger areas at relatively lower densities. The automobile has done much to free men and women from the barriers of distance, but when congestion of traffic in the centers fed by the reverse use of radial routes reaches the point that the private automobile is no longer useful, it is only reasonable to suppose that the Great American Public, tenacious of the privilege of self-transportation, will tend to congregate in decentralized satellite cities for living purposes even when business dictates headquarters in the heart of a metropolis. How far the item of physical concentration of professional, banking, and business interests will carry into the future cannot be predicted at this time, but there will probably come a time when the very size of the concentrated areas will defeat their alleged purpose of bringing groups into close personal contact. The competition between regional business and banking centers may tend to disperse the commercial population throughout more urban regions.

The tendency of modern zoning for the different classes of commercial and residential districts is to limit both the bulk and the height of buildings in the interest of providing light, sun, and air within the building and, more recently, in an effort to reduce the complications of congested traffic and lack of recreational open spaces which result from too intensive use of land. The pyramiding capitalization of land values which has been a by-product of highly intensive use of land has frequently more than absorbed the increased profits from exceedingly high buildings and has been accompanied by a tendency to build and rebuild favored spots in older commercial areas at the expense of neglected or blighted districts. A reasonable limitation of both bulk and height would undoubtedly result in spreading physical improvements more generally over an entire central commercial area and in a stabilization of values distributed more evenly over that same district. An examination of lower Manhattan reveals the fact that great neglected or blighted areas now exist which could be improved by modern commercial buildings if the needs had not been met by high buildings on a comparatively small part of the great down-town area.

Until more careful studies have been made covering the behavior of values of land and buildings under different modes of treatment, it is impossible to indicate the absolute height or bulk which should prevail in any specific instance, but students of city planning have no doubt that there are definite optimum relations between the height and bulk of buildings and the adjacent open space, both private and public, and that wide departures from these relations should be publicly restrained.

Density standards

It is safe to say that the building and rebuilding of cities in the next century will not be permitted to proceed under the haphazard lack of plan which characterized the nineteenth century. There is every indication that expert guidance will control the use of urban land. Standards for occupation of land will be defined. We shall have data to enable us to learn when the financial and social burdens of intensive use of land reach the point that will dictate lateral rather than perpendicular expansion. Our real difficulty is in discovering at just what point intensive use under given circumstances becomes excessive.

In Manhattan today only 12 per cent of the area is in public open space, with only one acre to 1,234 persons. In the area below Fifty-ninth Street there is an average day population of 352,000 persons per square mile, or about 550 persons per acre. In the small "Loop" in Chicago there is a daytime density nearly five times that of lower Manhattan.

In the studies of the region around Chicago, taking a maximum of six houses in a standard block 660 by 330 feet, or an area just under five acres, as the lower limit in intensity of use, in defining *gross utilized area*, it was found that twenty-six cities in the Chicago region which at the close of the nineteenth century had a total population of seventy thousand odd, of which 86 per cent were living in the *utilized area,* as defined, had in the course of twenty-five years increased in population to more than 270,000, with 92 per cent inside the new *utilized area.* The average density of the *utilized area* had only increased from 11.5 to 12.1 per acre. The conclusions would indicate that these towns have grown largely through the occupation of vacant or unused land rather than through more intensive use of land already occupied. The towns relatively close, as counted by *time* of transportation into Chicago, showed a higher density than those at greater time distance, though, of course, the radius of residential suburbs from the parent city has constantly increased during the past quarter of a century.

With this data in hand, the forecast population in each class of areas can be shown and a fairly accurate calculation can be made of the area which will be occupied in 1950. Roughly speaking, it is this area for which plans for at least a generation ahead should be made in some detail. Perhaps the predicted area of occupation should include estimates, for any increased allowances for street, park, and playground, of open spaces which may come to be accepted as desirable.

Space occupied by commerce

There is a great variation in the different cities in the proportion of the space occupied by commerce and the total area. This variation is partly accounted for by the inclusion within some city limits of large unoccupied spaces, either in parks or in undeveloped territory. The proportion also is affected by the degree of intensity of occupation of land for residential purposes. Thus in Minneapolis we have only 1.5 per cent of the total area used for commercial purposes, whereas in Lynchburg, Virginia, 10.2 per cent is so used; in Milwaukee, 16 per cent; and in Columbus, 12 per cent. If these proportions are adjusted to represent ratio of commercial area to total privately owned area in three of these cities, we have:

	Residential	*Commercial*	*Industrial*
Minneapolis....................	80.8	3.3	15.9
Lynchburg......................	74.9	15.0	10.1
Columbus.......................	54.4	26.0	25.6

It is obvious that no hard-and-fast ratio, based on area alone, can or should determine the space devoted to commercial uses, since the proportionate needs for first-floor shopping and marketing space of a population housed in high apartment buildings would exceed that of a city in which the people were generally housed, as in Minneapolis, in single-family homes surrounded by yards. In cities where high residential buildings are erected, we usually have the skyscraper office building, but the existence of larger numbers of high buildings is ordinarily a sign that there is an urban region outside the city limits. The space required to serve a big suburban or satellite region would be greater than that needed for a self-contained city. It should be recognized, however, that both from the community point of view and from that of the individual property-owners, the assignment of too much space for commercial uses at any given time under the zoning classifications tends to cause a ragged development of the city as a whole and allows property to hang for years in a transition stage when it is no longer desirable for residential purposes and yet is not in demand for commercial use.

Modern zoning recognizes the need for small decentralized shopping and marketing centers in addition to one or more down-town business centers. The problem is to provide sufficient commercial area to serve the city at any given period and to adopt plans for future expansion which shall provide the right commercial area in the right locations at the right time. This, in turn, depends in large measure on the distribution of the population in its living quarters.

Relation of open spaces to population

Thomas Adams asserts that in planning urban areas there are two special forms of open spaces that need to be considered:

1. Space about buildings or private land in private ownership.

2. Space acquired by or dedicated to the public for circulation and recreation.

If some principle of relationship could be worked out so that intensive use of land for living quarters beyond an accepted standard would entail a compensating open space of privately owned land dedicated to grounds, it might result in an automatic stabilization of the ratio of the number of apartment and tenement buildings to other types of habitation. Under the present unregulated or loosely regulated occupation of land, speculators can erect high apartment buildings with little or no open ground, and thus place on the entire community the burden of supplying open spaces for the additional population which the land must carry.

Recreation space

The relation of public open spaces to area and population has received much attention in the urban regions of the United States during the past few years. The staff of the Regional Plan for New York has prepared a set of what might be called minimum recreation space requirements which may be summarized:

Children's playgrounds — 25 square feet for each child of 5 to 15 years of age within a radius of a quarter of a mile.

Athletic fields and playgrounds — 50 square feet for every person 12 to 24 years old in borough or city.

Neighborhood or local parks — 3,000 to 5,000 adult inhabitants per acre of park.

It is estimated that one acre of open space is needed for *active recreation* to every thousand persons in the general population. For all recreational purposes it is estimated that a desirable minimum might be one acre to three hundred persons. It will be seen that a designated percentage of the gross acreage to be set aside for public open spaces would bear a very different relation to the population in a district of high intensive land use and to a sparsely settled section. The rule requiring 10 per cent of the gross area for public open spaces ought not to be applied when it brings the persons per acre above three hundred.

These very conservative standards come from one of our most congested and populous urban regions, and seem modest when compared to existing conditions in Prague where there are a little less than two and a half acres for every two hundred and fifty persons, and where, according to M. Max Urban, the goal is to provide a hectare (slightly less than two and a half acres) for every forty persons. In 1925–1926 there was in Washington, D.C., one acre of recreation space for each 128 inhabitants; in Kansas City, one acre for each 100 people; in Los Angeles and Portland, Oregon, one acre for each 118; and in Indianapolis, one acre for each 122 inhabitants.

In permitting great urban regions to become densely populated, it is apparent that the essential country parks and parkways within the region should be chosen before their natural advantages are destroyed, and in time to provide extensive open spaces which can be reached with reasonable ease by the population in all parts of the city.

Perhaps it is not too much to ask that, in the distribution of open spaces, most of the citizens should not be required to travel much more than a mile to reach some park extensive enough to offer a real country landscape. Neighborhood parks do not serve their purpose well if their patrons must walk over half a mile. Playgrounds for little children, whether in connection with neighborhood parks or established separately or in connection with school grounds, should, ideally, be within a quarter of a mile of the children who use them.

These rules cannot be absolute. They may be superseded by better ones, but at least they furnish a rough gauge for distributing the park and playground area, so that the recreational needs of the people may be met.

Street space

The ratio of street space to the total area varies greatly in American cities, running below 15 per cent in such towns as York, Pennsylvania, and Lynchburg, Virginia, and over 30 per cent in a residence town like Oak Park, Illinois, with an average of 25 per cent in San Francisco and Berkeley, California; Columbus, Ohio; and Detroit and Duluth. The typical platting in New York City allows 30 per cent of the total area for streets.

But it must be evident that the percentage of any city which should be given over to streets will depend in some measure on the degree of intensive use to which the land is put and the population of the tributary area which makes use of the main thoroughfares. The difficulties in expanding street space to accommodate these changing factors are many.

The planning of certain wide streets with easement strips which are turned over to the owners of abutting property for care as front yards makes easy and cheap provision for street-widening when needed. Washington has recently widened a number of streets by taking over easement strips which have been used for over a hundred years by owners of private property.

In most cities the pressure upon down-town streets and main arterial highways must become insupportable before programmes for street-widening, new streets, or new street-levels are undertaken. The obvious alternative to these expensive operations is the limitation of the bulk of buildings. The difficulty comes in ascertaining just what bulk, if adopted by all property-owners in the section, the existing streets could serve efficiently.

Many of the zoning-height and step-back limitations do bear a relation to street width, but few, if any, down-town sections in the larger American cities would be comfortably served with existing streets if all the area were covered with buildings of maximum bulk and height permitted under the zoning regulations.

Open space in subdivisions

The tendency in laying out new residential subdivisions is actually to reduce roadways and to increase yard, public recreation, and parkway space.

H. V. Lanchester, at the 1928 International Housing and Town Planning Congress, suggested a formula for determining the open space (including roads) which should be provided in any subdivision: that is, 8 per cent of the total area, plus 1.5 per cent for each house per acre.

For 6 houses per acre, open space $= 8\% + (1.5\% \times 6) = 17\%$ of total area
For 8 houses per acre, open space $= 8\% + (1.5\% \times 8) = 20\%$ of total area
For 12 houses per acre, open space $= 8\% + (1.5\% \times 12) = 26\%$ of total area
For 16 houses per acre, open space $= 8\% + (1.5\% \times 16) = 32\%$ of total area
For 20 houses per acre, open space $= 8\% + (1.5\% \times 20) = 38\%$ of total area

Such formulas must be taken as minimum standards and, to be permanently effective, should be accompanied with provisions to increase the open space if later changes in the number of houses to the acre are made. Generally, in both residential and business sections, the street space, at least, is sufficient to be in proportion to the first use of the land; but, as time goes on, succeeding intensive uses of the land take place with no compensating additions to street and other open spaces.

Studies which will discover sound ratios of population related to area and open space, both street and recreational, are needed on which to base regulations which will control automatically the compensating open space which must be provided for additional intensive use of land above certain standards which conform to the existing open space.

Transportation and zoning

In cities, repeated studies have been made to designate, locate, or modify main traffic arteries to take people from their homes to their places of business or to attend to their affairs without carrying them athwart other great streams of unrelated traffic. It is becoming increasingly difficult to serve mixed-use municipal districts with streets and sidewalks of the right width and materials and with suitable public utilities, since the land and utility needs of great factories, huge office buildings, large department stores, high apartment buildings, small retail shops, and large and small individual homes differ greatly. These differences in needs have been responsible for the definite assignment of certain sections of the city to specific uses. The modern application of zoning principles means far more than *limiting* the use of land in certain localities to the use desired by the majority of the landowners or to the use already developed by some owners. It means, ultimately, particularly in new occupation of land, the finding of the best uses for each section of the town so that they may function with the least possible interference with each other.

Extraterritorial needs of urban population

The absolute dependence of the population of urban regions upon the agricultural resources of the country is generally recognized. Urban populations furnish the majority of the visitors to national and state parks. Urban populations also furnish most of the patrons of the golf links of country clubs, which are generally located outside of the city limits but frequently within urban regions. One of the problems of growing populations in cities is the sale for subdivision of open country-club space which has enhanced in value because of the residential use of the adjacent land, drawn to the district by the open club space, for country clubs are not, like public parks, dedicated to be held open permanently.

Public institutions with open grounds in the outskirts of cities sometimes move farther out as the city overtakes them, and the areas so deserted are not always taken over for public parks.

Cemeteries are usually outside the "utilized area" of cities at the time they are laid out. They are, perhaps, the most lasting of the quasi-public open spaces, but even old cemeteries are occasionally abandoned and the sites taken over for other uses.

Most cities bring their water from the hills or mountains and acquire a series of storage reservoirs outside the city limits. This is not only an extraterritorial use of land, but makes demands on the total supply of water from a water-shed region which may be required to meet, ultimately, many demands.

It may be in the future that the populations of great urban regions, especially in the Southwest, will be limited more sharply by available water supply than by the production of foodstuffs in the United States.

In the past, cities have generally used their own initiative and judgment in bringing to their doors an adequate supply of water. The physical engineering difficulties in carrying water great distances from remote catchment basins are not insuperable. The city of Los Angeles, believing that the near-by available supply of water will be inadequate to meet the needs of the future population, is negotiating for water from the Colorado River to be brought from outside the state of California across a high mountain range; but the disposition of the waters of the Colorado River has been in dispute between the users in seven states.

The final adjudication of water rights, not only for water supplies to urban regions but for the development of power for light and labor-saving devices and the operation of inland water routes, is a national problem. This adjudication has in it the elements of bitter controversy in so far as it affects the possible population which may be supported in comfort in particular regions.

If, as is sometimes predicted, the strip of land along the Atlantic seaboard from Portland, Maine, to Washington, D. C., becomes an almost continuous urban settlement, it may be necessary to decide conflicting claims for water supplies for the various sections of the population.

At any rate, the time has come when careful studies should be made of the water resources of the United States by drainage areas, not from the point of view of a single type of use, such as power development, or irrigation of crops, or city water supplies, or navigation, or protection of scenic falls and streams in natural parks, but with the idea of making an inventory of all possibilities and working out a balanced programme which will give each sort of water-use a fair proportion and which will adjust the conflicting claims of the different types of users.

Planning for future populations

Our urban populations in the past have grown without much direction and control. Like sheep, the excess rural population and the small-town youths have sought metropolitan centers. Possible business opportunities and indoor recreation facilities have proved powerful magnets.

But the increasing economic freedom which is giving leisure to larger numbers of city dwellers is developing new wants and even, to some extent, the desire for larger cultural opportunities. The choosing of locations for factories and commercial establishments is gradually being put on a more scientific basis which takes into account not only investment in plant and available labor-supply but the comfort and convenience of living conditions, the adequacy of schools, libraries, parks, playgrounds, and public utilities. Competent professional men and women may, and do, select the cities in which they prefer to work. Skilled laborers ordinarily have no difficulty in finding employment in the cities of their choice.

With the opportunities for automobile travel, which are almost universal, since every man, woman, and child in the United States could be seated at one time in the existing automobiles, the American people cannot fail to be more intelligent critics of towns and cities.

We shall see the development of gauges by which to measure the comfort, convenience, educational and cultural advantages, opportunities for outdoor recreation, transportation facilities, and other desirable assets which different cities have to offer their respective populations. In the past many city dwellers have accepted the results of uncontrolled and unscientific distribution of population in commercial and residential districts as the inevitable price they must pay for enjoying certain metropolitan advantages. When they find that scientific planning can mitigate many of the discomforts and inconveniences of city living, they will demand better planning.

Within urban regions, therefore, we may expect to see a vast improvement in the distribution of the population and in the location of the commercial and industrial districts. As between urban regions, the principle of competition will probably operate to force the adoption and application of modern comprehensive planning and zoning. And unless the great urban regions take particular care to avoid the evils of excessive congestion of population and traffic, they will find their populations slipping away to newer urban regions which have not yet reached the acme of congestion discomfort, a paradoxical consummation which may contribute to the comfort of the survivors, but which will certainly be accompanied by difficult economic adjustments. The deflation of values in sections where excessive concentration of population has been permitted on the land will not be a more agreeable experience for the owners or have a less devastating effect on the community in the future than the transformation of once high-class residential neighborhoods into blighted districts has involved in the past.

Until we discover the principles which should govern the development of urban land, the ratios between bulk and height of buildings and open spaces for circulation and recreation, the point at which overloading the land and producing "boom" values places business property in the sure line for future deflation, the minimum amount of space in various services with which each citizen should be provided to continue in health and happiness, we cannot be sure that we are building with any degree of permanency. Just as today we are scrapping good but so-called obsolete buildings to make way for more up-to-date structures, we may in another quarter of a century be seeking adjustments for certain commercial and residential slums which we are building today in the apparent belief that there is no limit to the load which the land can carry and no barrier to the indefinite increase in values from concentrated use of land.

Land economics studies should develop these principles.

LXIII. SOME PROBLEMS OF COMMUNITY PLANNING

1. CORRECTING MISTAKES[1]

By Nelson P. Lewis

Late Chief Engineer of the Board of Estimate and Apportionment of New York City

It is not unfair to say that a large part of city planning — too large a part, in fact — consists of the correction of mistakes. This is not unnatural, for the reason that it is the realization of the blunders that have been made through lack of foresight, or appreciation of the unsuitability of a plan under changed conditions, that has rendered the need of better planning obvious. When conditions due to these mistakes or misfits become intolerable by reason of public inconvenience through obstruction of free movement and actual financial loss from consequent delays, and when the ugliness which is inseparable from lack of orderliness is realized, the demands for correction of the defects in the plan are insistent and the public is willing to pay the price, however great it may be. The most of what are called city planning projects are of this kind, and serious attempts to avoid the same mistakes in parts of the city where improvements have not gone so far as to forbid readjustment of the plan without great expense, or to profit by past experience in the development of plans for the portions not yet mapped, or to save the unspoiled places, appear to have been afterthoughts. Some stupendous plans for the improvement of conditions have been advanced and in some cases carried out. Perhaps the most spectacular of all was the construction of the great boulevard system of Paris under the direction of Baron Haussmann. Undertaken partly for reasons of military strategy, but also to beautify the city, the various projects were carried out within a relatively short time, considering their magnitude, and were financed by an imperial government with far less delay and debate than would have been possbile under a democratic government, where it would have been necessary to convince the people that they were essential and that they would be worth the enormous cost involved. Naples also has carried out some great improvements by the cutting of broad avenues through districts where narrow, tortuous streets did not provide sufficient light and air to make business profitable or living tolerable. Vienna made herself one of the world's most beautiful cities, not by correcting mistakes in planning or which were due to lack of planning, but by availing herself of an opportunity to use lands formerly devoted to defensive works which were useless under modern conditions.

---

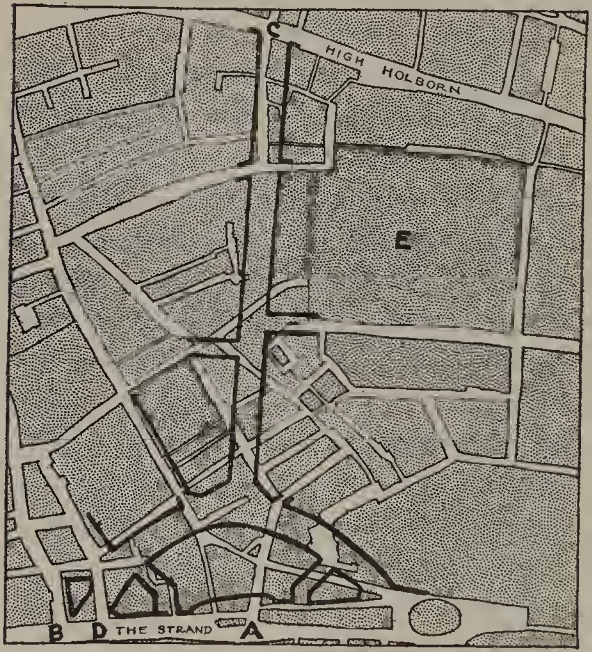
[1] Reprinted by permission from *The planning of the modern city*, by the late Nelson P. Lewis, published by John Wiley and Sons, Inc., 1923, pages 27–43.

Chicago, through the efforts of private citizens, has worked out a plan for rearranging and reconstructing a considerable part of the city, which, if carried out in its entirety, will require many years of time and scores of millions of dollars, and a beginning has already been made on some of the details of this plan. In the last-named city a phenomenally rapid growth has brought about within a generation the conditions which it is desired to correct, the city being so intent upon its physical and material development that little thought was given to the manner of its growth and the embarrassments to which its faulty plan would lead. New York, or at least the Borough of Manhattan, continued until quite recently to grow in accordance with a plan prepared for it a century or more ago, without a realization of the defects of that plan; and now some modifications, the need of which is quite apparent, are rendered prohibitively costly on account of the building damage which would result, although some radical changes have been and are being carried out.

Some of the conditions which it has become necessary to remedy have been of very slow growth, and the agitation which has finally resulted in their improvement has been continued for many years. Instead of referring to a number of such projects, one or two will be described in some detail. One of the most conspicuous is the Strand-to-Holborn Improvement in London.[1] This traverses one of the oldest parts of the city, where in the course of centuries a series of narrow, crooked, and unrelated streets and lanes had grown up. High Holborn, of fairly generous but very irregular width, bounded it on the north, and the Strand, narrower and equally irregular in width and lines, lay to the south. Drury Lane made an attempt to connect the two thoroughfares, but seemed to give up the idea and was shunted off into the narrow Wych Street before reaching the Strand. Lincoln's Inn Fields lay in the easterly part of this district and about three hundred feet south of High Holborn and was an open space which appears to have given the public authorities much concern for generations. Formerly a place for the execution of criminals and in some instances of political offenders, it had a bad name, although it was referred to as one of the most beautiful squares in London, and parts of it were bordered by "dwellings of noblemen and gentlemen of qualitie." In the early part of the seventeenth century, plans were made for its improvement and ornamentation, but they were not carried out, apparently for the reason that funds for the purpose were not provided. Finally, in 1735, Parliament passed "an Act to enable the present and future proprietors and inhabitants of the houses in Lincoln's Inn Fields, in the County of Middlesex, to make a rate on themselves for raising money sufficient to enclose, clean, and adorn the said fields." The conditions which it was desired to remedy are set forth in great detail in a preamble to the Act which reads in part as follows:

---

[1] The agitation leading up to this improvement and the conditions which it was designed to remedy are described in detail by Charles Gordon in *Old-time Aldwych, Kingsway, and neighbourhood,* from which and from official reports of the construction and opening of the new thoroughfares, the following information has been obtained.



The Strand-to-Holborn Improvement, London, Finally Carried Out Nearly Seventy Years after It Was First Proposed

And whereas the said great square now called Lincoln's Inn Fields, situate in the several parishes of Saint Giles in the Fields, Saint Clement Danes, and Saint Andrew Holbourn, in the County of Middlesex, hath for some years past laid waste and in great disorder, whereby the same has become a receptacle for rubbish, dirt, and nastiness of all sorts, brought thither and laid not only by the inhabitants of the said field, but many others, which has not been removed or taken away by the several scavengers of the parishes wherein the said fields are situate as aforesaid; but, also, for want of proper fences to inclose the same, great mischiefs have happened to many of his Majesty's subjects going about their lawful occasions, several of whom have been killed, and others hurt and maimed by horses which have been from time to time aired and rode in the said fields; and, by reason of the said fields being kept open, many wicked and disorderly persons have frequented and met together therein, using unlawful sports and games, and drawing in and enticing young persons into gambling, idleness, and other vicious courses; and vagabonds, common beggars, and other disorderly persons resort therein, where many robberies, assaults, outrages, and enormities have been, and continually are committed, notwithstanding the watch or guard allowed by the several parishes, wherein the said fields are situate, for preventing the same; and whereas the south, west, and north parts of the said fields are incompassed with houses, many of which are inhabited by the owners and proprietors thereof, who, with the other inhabitants, cannot go to and from their respective inhabitations in the night season without danger, and therefore are desirous to prevent any mischiefs for the future, and to inclose, clean, repair, and beautify the said fields in a graceful manner, and are willing and desirous that an adequate contribution may for that purpose be raised by and amongst themselves; wherefore, and to the end that the said fields may be inclosed, cleansed, and adorned, and kept in repair for the future, the said proprietors and inhabitants do most humbly beseech your most excellent Majesty that it may been acted, etc.

Lincoln's Inn Fields (E on plan) was finally redeemed and became an attractive park of some six or seven acres in addition to its bounding streets, but it was so hidden away in a maze of narrow lanes that one not familiar with its location would be unlikely to discover it. Even today the visitor to London might pass along Kingsway within fifty yards, or along High Holborn within a hundred yards, of this little park without suspecting its existence unless his attention were directed to it by a guide book. Its improvement was of little more than local benefit, and the delays and inconvenience to traffic in its vicinity were in nowise abated, and the need of a direct connection between the Strand somewhere near the Church of Saint Mary le Strand or the Church of Saint Clement Danes and High Holborn in the neighborhood of this open space was more and more obvious.

In 1836, and again in 1838, a plan was laid before the Select Committees on Metropolitan Improvements showing a scheme for connecting Holborn with Lincoln's Inn Fields and the Strand by a street fifty feet wide (A on plan); nothing, however, was accomplished.

In 1855 the Metropolitan Board of Works was created, and this same plan, with many others, was brought to its attention, and from that time until 1889, when the Metropolitan Board of Works was superseded by the London County Council, the scheme was the subject of frequent consideration and discussion, but nothing was done. Until 1883 the board had made no attempt to secure the sanction of Parliament for such an improvement, in view of what were considered even more pressing needs for new thoroughfares in other parts of the city. In 1883, however, the Metropolitan Board of Works concluded to apply to Parliament for the necessary powers not only to construct this street, but also to widen the Strand at Holywell Street. About the time this application was made, the project had expanded somewhat, so that it was proposed to make the new street sixty feet wide, commencing at Little Turnstile, Holborn, and proceeding to the westerly side of Lincoln's Inn Fields, and then curving eastwardly and entering the Strand to the north of Saint Clement Danes Church. The government, however, did not grant the authority requested. In 1889 the newly constituted London County Council referred this same project to the Improvements Committee and to the Committee on the Housing of the Working Classes, for the reason that it was believed that not only did the requirements of traffic demand this new means of communication between Holborn and the Strand, but that the building of such a street would cut through an area which would be greatly improved by its construction. This committee reported to the council a plan for the construction of a new street from Holborn at Southampton Row (C on plan) in an almost direct line to Catherine Street at the Strand (D on plan), with a spur from the new street running from a point about five hundred feet north of the Strand to the latter street at Saint Clement Danes Church. Again it was resolved to postpone this or any other large improvements until some satisfactory provision could be made for an equitable distribution of the expense.

In 1892 a modified plan was brought before the council, which included the widening of the Strand and the construction of a broad avenue from Holborn at Little Queen Street to the Church of Saint Mary le Strand, with two streets diverging from the principal artery and reaching the Strand at points to the east and west of Saint Mary le Strand Church. It was this time proposed to make the new street a hundred feet wide, with a circus some two hundred feet in diameter about midway between its termini. The committee in submitting the plan recommended that provision should be made in the bill that the owners of the property benefited should contribute toward the cost. The council adopted the recommendations, but, owing to some dissatisfaction with the proposed distribution of expense, the bill did not receive the approval of Parliament. The estimate of the net cost of this improvement, after deducting recoupment by disposal of the surplus land, was about $11,230,000. In 1895 and in 1896 the improvement was again brought before the London County Council, on the last occasion it being suggested that the original scheme of utilizing the western side of Lincoln's Inn Fields be again taken up. In 1896 the Council concluded that, without waiting to carry out the entire scheme, it was necessary without delay to proceed with the widening of the Strand. Parliamentary powers were obtained, and this improvement was at once proceeded with. One year later the council decided to undertake another improvement which was intimately connected with that which had been under discussion for so many years, namely, the widening of Southampton Row north of Holborn, and this also was carried out.

These two improvements, namely, the widening of the Strand and of Southampton Row, made it quite apparent that the only logical plan for the new Strand-to-Holborn thoroughfare would be that which was suggested in 1892 or such a modification of it as would result in a direct connection with the widened Southampton Row. In 1898, after careful consideration of a variety of competing plans, it was decided that the scheme of 1892 providing a direct route from Holborn at Southampton Row to the Strand, modified, however, in accordance with some suggestions made by the Royal Institute of British Architects, and with some alterations proposed by the committee, was the one to be carried out, together with a further widening of the Strand to the north of

Saint Mary's Church. The plan also provided for the acquisition of the whole site within the area bounded by the Strand and the two branch streets, as well as a considerable area of land which would front on the new streets. There was some difference of opinion as to whether these new streets should be made ninety or a hundred feet wide. It was found that exactly the same properties would have to be acquired for the ninety- as for the hundred-foot street, and while there would result from the wider street a smaller amount of surplus land, it was believed that the increased width of the street would enhance the value of this land to an amount greater than the value of the ten-foot strip to be added to the thoroughfare. This plan having been decided upon, it was submitted to Parliament, and was the largest scheme of town improvement ever undertaken in London. The plan was opposed by forty or more powerful and influential companies and persons on various grounds, including the following:

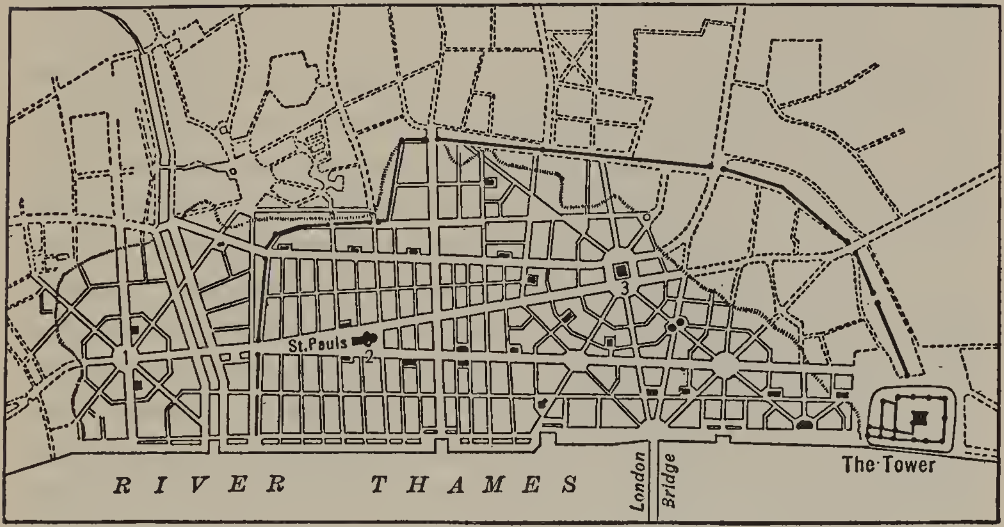
1. That the council should not be authorized to take property not actually required for the new street but needed with a view to recoupment, but that it should be limited in the taking of property to that actually required for the improvement.

2. That if the council were given this power it should not have the power to impose a special assessment.

3. That the owners of property to be taken were entitled to insist upon reinstatement upon some other convenient site.

The bill ultimately passed and became a law in 1899. In its final form the total estimate of the gross cost of the completed scheme was about $30,600,000, while it was estimated that about $21,800,000 would be realized from the sale of surplus land. The new street was constructed and was formally opened on October 18, 1905, and it is interesting to note that the gross cost of property taken was just about a million dollars less than had been estimated.

London's experience in securing this great improvement has been recited at considerable length for the purpose of showing for how long periods many defective street plans have existed, how the defects became emphasized as the city grew, and what long and persistent effort and agitation are required before their correction is undertaken. Those who have struggled to bring about some similar improvements in their own city and have become discouraged at the repeated failure of their efforts may take heart when they realize that the Strand-to-Holborn Improvement was first advocated no less than sixty-nine years before it was physically completed. There may be scant satisfaction in the thought that those of a succeeding generation will see the fruition of one's efforts, but we have learned something about the way to get results even under a democratic form of government, and plans for betterment which are really worth while and are intelligently and persistently advocated are not unlikely to be realized with fair promptness when their importance is generally appreciated. The people of a city which is self-governed seem to have a strong desire to talk over and debate any question relating to a municipal improvement, and this disposition is especially marked in the cities of Great Britain. The need of the improvement may be generally recognized, but the manner in which it is to be carried out must be thoroughly discussed, not by experts, but by the people themselves before they are ready to undertake it. When an unexpected opportunity to correct a defective condition at a minimum of expense is presented, it is rarely availed of, owing to this passion for full and free discussion. Mr. W. E. Riley, Architect of the London County Council, in a paper presented at the London Town Planning Conference of



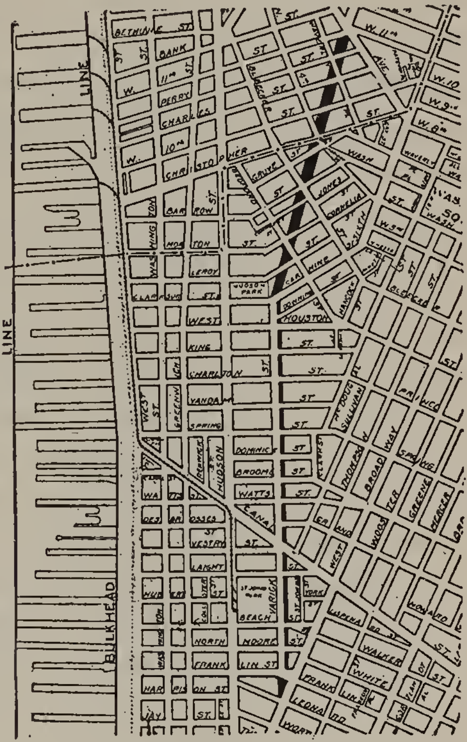
Sir Christopher Wren's Plan for Rebuilding the Central Part of London after the Great Fire of 1666

1910, notes that in the great fire of London, in 1666, an area of 436 acres was burned over, and, although Wren and Evelyn promptly put forward their plans for the rebuilding of these areas, "select committees and royal commissions have met and reported with frequency and perseverance during the last century," thus illustrating the unwillingness of the people to act upon the suggestions even of one who had done so much to make London notable as had Sir Christopher Wren, without ample opportunity for full and free discussion, which was so protracted that the city had meanwhile adjusted itself to the conditions brought about by the fire, and the old defects in the plan were perpetuated in the rebuilding.

Difficult and costly as has been the correction of the defects in the plans of European towns, it is vastly more so in cities like New York or Chicago, where, as the result of a lack of reasonable restrictions governing the height and arrangement of buildings, great and costly structures have been erected on narrow streets to such an extent that street widenings and the cutting through of new streets would involve so great an expense that they are out of the question. Perhaps the fundamental mistake was the failure to impose limitations of height and bulk which would in the first place have prevented the overtaxing of the streets and yet would have diminished the cost of widening them should it become necessary. When a structure like the new Equitable Building in New York, which occupies a block approximately 160 by 308 feet in size, one of the four bounding streets of which has a width of seventy-five feet, another forty-five feet, and the other two thirty-five feet, can be built to a height of thirty-eight stories, or 536 feet, at a cost of twenty million dollars for the building and land, converting each of the adjacent streets into a narrow canyon where direct sunlight is almost unknown, it is quite apparent that New York made one of its most serious mistakes when it failed to restrict the height to which such buildings could be carried and thereby made it possible to prevent a modification of the street lines after the erection of such buildings.[1] Efforts to bring about

---

[1] Since this was written, the erection of skyscrapers of huge bulk has gone on at an accelerating pace. Within a few blocks of the Grand Central Station in New York City there are now six new giants (the Chrysler, the Chanin, the Lincoln, the Lefcourt-Colonial, the Daily News, and the Graybar), with a capacity of 56,000


LINE
LINE
BULKHEAD
BANK
PERRY
CHARLES
10th
CHRISTOPHER
GROVE
JONES
WASH
W. 4th
WAVERLY
W. 9th
W. 10th
W. 11th
BARROW
MORTON
LEROY
CLARKSON
HOUSTON
KING
CHARLTON
VANDAM
SPRING
DOMINICK
BROOME
WATTS
CANAL
DESBROSSES
VESTRY
LAIGHT
HUBERT
BEACH
NORTH MOORE
FRANKLIN
HARRISON
WEST ST.
WASHINGTON
GREENWICH
HUDSON
VARICK
SULLIVAN
THOMPSON
W. BROADWAY
WOOSTER
GREENE
MERCER
YORK
WALKER
WHITE
LEONARD
WORTH
ST.

Seventh Avenue Extension, New York

A new street cut through from Seventh Avenue to Varick Street to open a new north-south artery. A similar extension of Sixth Avenue is now in process.

improvements in existing conditions or to correct mistakes frequently fail for the reason that they are too ambitious or attempt to do too much at the same time. Official commissions and unofficial committees have been appointed and have made many plans for the correction of all the defects they could discover, but by reason of their failure to concentrate their efforts on one or two details of unquestionable importance, their labors have come to naught. Such a commission was created in New York City in 1904, and three years later presented a report, accompanied by a great number of plans involving radical changes. Some of them were admirable, particularly a few which related to the provision of a system of parks and parkways for a part of the city which was still undeveloped and for which there was no adopted street plan. Attention and interest were diverted from these, however, by a number of more spectacular projects for the cutting through of new and the widening of existing streets and the creation of plazas, the cost of acquiring the land for which, with the damage to existing buildings, but with no allowance for construction, was estimated to be nearly one hundred millions of dollars. One or two of the projects have been or are in process of being carried out, but the agitation for them began before this commission was created and was persistently kept up until actual results were

---

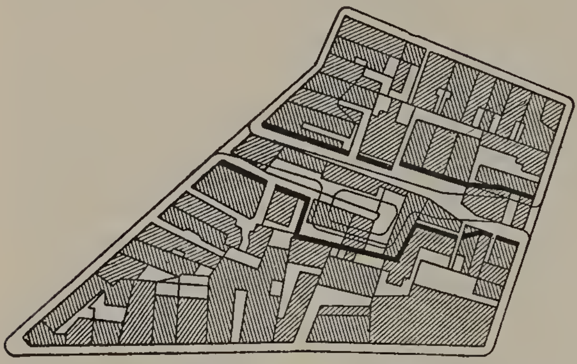
persons. At Thirty-fourth Street there is now rising the Empire State Building, planned to house 60,000 workers. When we consider that a crowded subway car holds 200 people, and a ten-car train 2,000, we can appreciate what this means in congestion. — The Editors.

obtained. One of these was the southerly extension of Seventh Avenue and the widening of Varick Street. Old Greenwich Village had an irregular street plan with no continuous and adequate north-and-south artery of traffic. The plan adopted in 1811 with its series of broad north-and-south avenues adjoined Greenwich on the north. The new Pennsylvania Station was located on Seventh Avenue between Thirty-first Street and Thirty-third Street, while the building of the new Chelsea Docks along the Hudson River just west of the northerly part of Greenwich resulted in an increase of street traffic which had no adequate outlet to the south. A new four-track, rapid-transit subway was planned for the west side of lower Manhattan, but there was no available street which would afford a direct route for this transit line. A southerly extension of Seventh Avenue, together with a widening of Varick Street to West Broadway, appeared to offer a solution of the difficulty. After considerable discussion, which seemed brief in comparison with that devoted to the Strand-to-Holborn Improvement, the street was laid out, title acquired, the four-track rapid-transit railway has been constructed in it, the roadway has been substantially paved, and this part of the city is showing the vitalizing effect of a new traffic artery, conspicuously lacking in the old plan. The cost of acquiring the property, exclusive of the physical improvement, was more than $8,200,000.

Perhaps the most ambitious scheme for correcting the defects in the plan of a great city is that prepared by Mr. Burnham for the reconstruction of a large part of the central portion of Chicago and advocated by the Commercial Club of that city. It has been so often and so fully described, illustrated, and discussed that it is scarcely necessary to refer to it at length. It includes not only the widening of many of the existing streets, but the creation of a great number of diagonals which would cut through many blocks of intensively developed property. Perhaps its most spectacular feature is the great boulevard which sweeps on a circular curve through or about the district to be rearranged, with an imposing civic center midway, or at the point of the curve farthest from the lake front. The plan also includes an ambitious scheme for the development of the lake front by the improvement of existing and the creation of new parks, although this city possesses an unusually complete park system. Grant Park, at the easterly end of the great axis leading to the civic center, is to be extended into the lake, and will include a large lagoon or harbor for pleasure craft, while fronting it will be several monumental buildings. This part of the improvement and some of the other details in the vicinity have already been undertaken. The entire project of reconstruction, if carried out as planned, will require many years and will involve the expenditure of scores of millions of dollars. Its serious consideration and the actual commencement of the work offer evidence of a courageous optimism and faith in the future of their city on the part of the people of Chicago, and a devotion to the public interest on the part of the aggressive organization which has put forward the plans which may bring about their realization, stupendous as they are.

Other changes might be cited, such as the removal of "the hump" in Pittsburgh, where the street grades over an area of eighteen and a half acres in the heart of the office district were lowered varying amounts up to a little over sixteen feet, buildings of over twenty stories being underpinned and carried down to the new grades and their façades being remodeled to conform with the new conditions. The rate of grade of the principal thoroughfare traversing the district was reduced from 7.6 per cent to 4.87 per cent, and at one point this street was lowered nearly fifteen feet. The value of the property affected was over $56,000,000, and waivers of damages were secured on property representing more than 77 per cent of this valuation. The cost of the improvement is estimated to be $3,141,000, of which about $763,000 is for the physical work of changing the street grades with the readjustment of sewers and water mains, the remainder of the sum being for damages, against which there were offset assessments for benefit amounting to about $909,000. These figures do not include the expense imposed upon the public service corporations in the removal and reconstruction of their surface and subsurface structures, nor that incurred by property-owners who waived damages and reconstructed and adjusted their buildings at their own expense.

Such corrections are not often on so vast a scale. Many have been carried out and many more have been proposed which, while covering a limited area and involving comparatively little expense, have redeemed the neighborhood by the removal of a blight which has grown up as the result of an inadequate street system, but which could not survive when the sunlight was let in. Two small blocks, both of which are grossly overbuilt, are separated by an irregular narrow lane. The smaller of the blocks contains a population of 905 to the acre and seventeen places of business, the larger a population of 822 to the acre, with thirty-two business places. The alternative plan suggested by the commission shows how these conditions could be improved by widening the lane and creating a small open space about midway of its length. The report states that the Boston planning board has estimated that by levying reasonable betterment assessments on the property benefited the proposed improvements could be made at a net cost of $7,500.



AN OVERBUILT BLOCK IN BOSTON AND MANNER OF REMEDY

Many more instances might be given, and, while less spectacular and attracting less attention than the creation of civic centers or new boulevards, they are fully as important and will as vitally affect the districts in which they are located. They are called city or town planning, and no exception can well be taken to their description as such, yet it must be admitted that the necessity for them is due to a lack of farsighted planning in the beginning and that they are really the correction of mistakes.

2. AN INDUSTRIAL CITY BUILT TO ORDER — KINGSPORT, TENNESSEE [1]

BY JOHN NOLEN

City Planner

KINGSPORT, Tennessee, is in various respects one of our most remarkable American examples of modern city planning. It began as a new town. Its site, though hardly a wilderness, was an out-of-the-way agricultural region, remote from the world's activities. In 1912 the only human habitations there were two farmhouses. As late as 1915, only a few months after the outbreak of the World War, when it had started to grow in an entirely different way from the course destined for it, it was merely a small agricultural community of about nine hundred inhabitants. In four years more it had become a flourishing city of more than ten thousand people.

---

[1] Reprinted by permission from John Nolen, *New towns for old*, Marshall Jones Company, Boston, pages 50–65.

Purely a matter of business

Yet, unlike so many new populations of phenomenal development that originated about that time, when armies of industrial workers were massed at various points to meet urgent demands, it was not at all a "war-baby." Kingsport became what it was simply because a new railroad, built through an undeveloped region, needed traffic. So a city was built for the sake of making business for the railroad. It could have made no business, however, had the makings of business not been on hand.

The story of it all reads like a romance. In its origin Kingsport was much the sort of town that, early in the eighteen nineties, often came into being in western Canada, when the great railway undertakings were pushing their way along the prairies and over mountain ranges, across the continent and up into the north. The railroad in question here was the Carolina, Clinchfield, and Ohio, running from Spartanburg to Elkhorn City through a region in southeastern Tennessee where population was sparse and construction was costly even for that day. Fortunately the country was replete with natural wealth: coal, timber, a great variety of minerals (including sand, clay, limestone, silica, feldspar, and kaolin), and other desirable raw materials. There was an excellent water supply. It was a good agricultural country, though little developed.

Transportation had been lacking to make these things available. But all these materials were valuable for working up into a diversity of manufactured products. With the railroad built, this was made locally possible; it was manifest that, with industries once established, profitable tonnage for the railroad would be produced, while the needs of the town built as the seat of these industries would assure other new business.

The little agricultural community that with the coming of the railroad had sprung up indicated that Kingsport was the proper site for this town. The land was favorable for building — a wide and winding valley of remarkable natural beauty, coursed by the Holston River. Important industries immediately began to establish themselves here, attracted by the favorable conditions. First came a large producer of Portland cement, building up very speedily an extensive business. Others followed, alive to the value of the clay fields and other sources of raw materials. The prospective development assured by these activities promised to be so rapid and extensive that both the railroad company and the heads of the industries decided that continued growth ought to be carefully prepared for. They had the good sense and the good taste to see that this should be done as thoroughly as possible. So the services of a town planner and of an architect were enlisted.

Fortunately the community was still in its early stages; the revision and extension of the inadequate scheme prepared by the railroad's engineers proved easily practicable to a degree that gave the town a new and substantial basis for intelligent growth. The result was the development of one of the best-planned industrial communities in the annals of modern town planning — remarkable by reason of the harmonious coöperation of several independent agencies in an achievement that may well be called ideal in the quality of their respective fruitions: industrial, economic, hygienic, civic, cultural, and aesthetic. It was primarily a business proposition, undertaken with a common-sense view to profitable returns. With such enlightened perception as to the directions in which true self-interest lay, these other advantages were added thereto as by-products, derived from development along intelligent lines as essentially as the by-products that come from the processes of modern chemistry.

The development

This harmonious coöperation was made possible by the organization of an effective instrument for the purpose, in the shape of the Kingsport Improvement Corporation. This organization has stood at the head and front of all the basic activities and is responsible for the town. Chartered as a commercial venture, it has succeeded phenomenally in all respects. It started right. In it were represented the various business interests mainly concerned — the railroad company and the leading industries. It began its operations with a plan that farsightedly looked to the future. The plan laid down courses of wholesome growth along the lines of least resistance. Looking to community well-being, it forestalled the evils that modern industrial developments otherwise bring in their train as surely as neglected puddles breed mosquitoes.

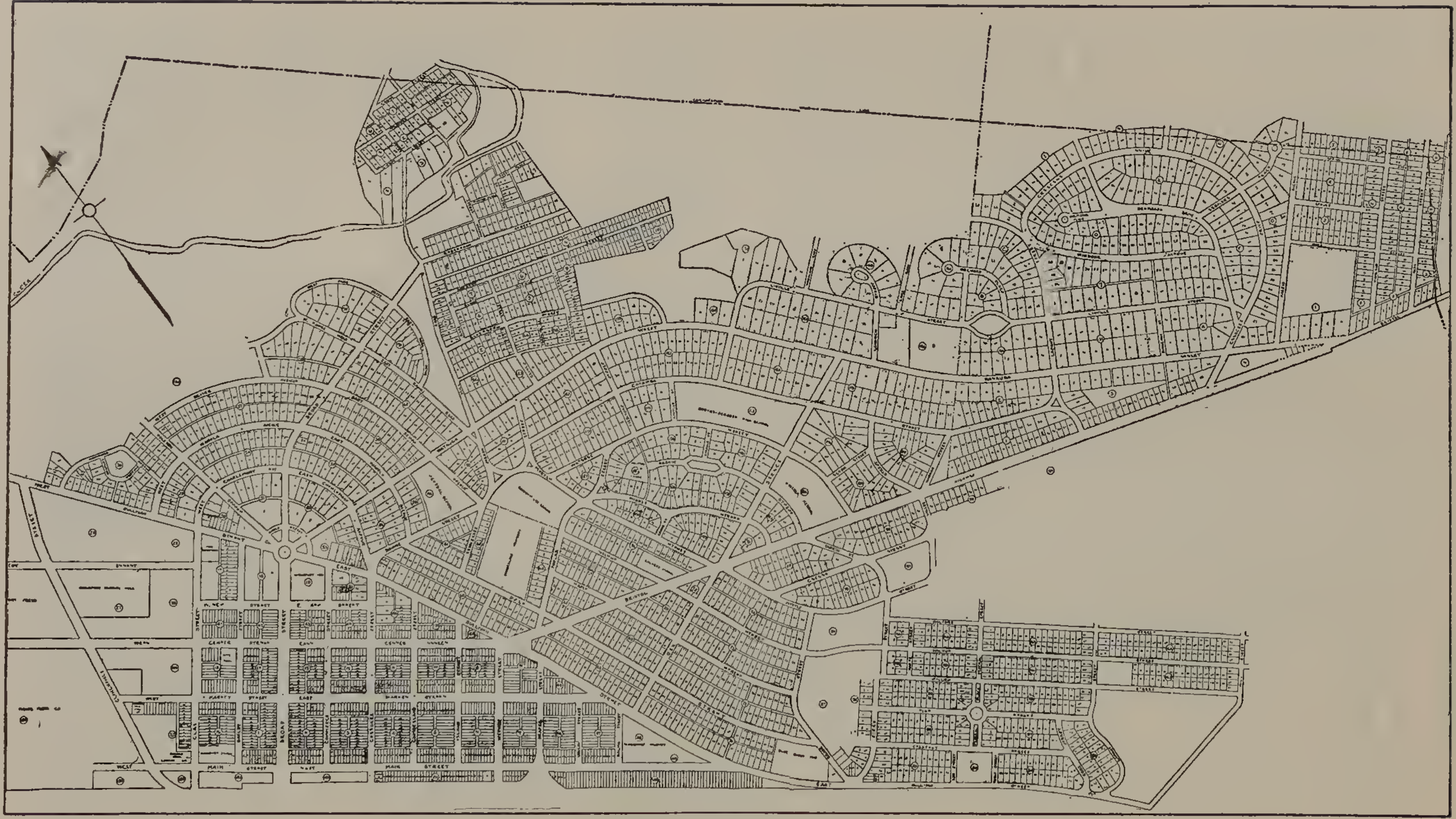
The Kingsport Improvement Corporation owns most of the real estate; it builds, rents, and sells houses; it runs a central power plant; it established an inn, constructed a golf course, and developed the industries. Local administration rests with a council of five representatives, elected by the citizens every four years. The city charter was designed with the intention of achieving the most efficient results, by the Bureau of Municipal Research established by the Rockefeller Foundation. Under its provisions the council chooses the mayor directly from one of their number, and the mayor appoints a city manager with complete control of city work and employees. The manager need not be a resident of the city or state when chosen. The school board, consisting of three men and two women, is appointed by the mayor.

The schools are organized according to the admirable system that originated at Gary, Indiana, generally regarded as a model of its kind. Physical training is an essential feature; to this end each school has four acres of playground in charge of a special instructor.

Public health and universal insurance

A community kept in good health by proper physical training for the young and by the dissemination of popular knowledge of hygienic principles prospers correspondingly by reason of enhanced earning capacity. A person well and strong is a public asset; a sick person is a public liability. In this regard, Kingsport is unique. A city hospital, thoroughly equipped, is managed by the municipality; it has accommodation for forty patients. In the matter of public hygiene particular stress is given to the importance of preventive measures.

Kingsport's distinction comes still further from employing a type of effort for public health over and above the usual and customary measures. "Group insurance" has for some time been an established practice. In this way it is not uncommon for all the workers of an industrial or com-



Kingsport, Tennessee

Note the industrial section in the western part of the city, the residential developments on high ground to the east, with the business district in a level area between them.

mercial organization to be insured. But Kingsport offers the first instance of applying the group principle collectively to all the workers of a city, male and female — with life, health, and accident policies covering them individually, all taken out under an arrangement with a single great insurance company. This is done without previous physical examination.

Practically all the business of Kingsport is conducted by a dozen large industrial concerns: the Borden Mills, Inc.; the Kingsport Hosiery Mills; the Kingtan Extract Company; the Kingsport Tannery, Inc.; the Clinchfield Portland Cement Corporation; the Mead Fibre Company; the Kingsport Press; the Kingsport Stores, Inc.; the Kingsport Farms Corporation; the General Shale Products Company; the Tennessee Eastman Company (a branch of the Eastman Kodak Company); and the Kingsport Utility Company. To these must be added the municipality, itself an employer. In order to include the city employees in the scheme of blanket insurance, special legislation had to be obtained.

All these undertakings are represented in the Kingsport Improvement Corporation, whose president and moving spirit is J. Fred Johnson. Of the conclusion reached by Mr. Johnson and his industrial associates, A. M. Kingman says:[1]

> These men decided that Kingsport should be as nearly an ideal manufacturing city as human agencies could make it. They realized that living conditions greatly affect the morale of a town, and that general contentment and the elimination of worries go far toward producing the spirit so necessary to the accomplishment of good work. Men who are worried because they have sick children at home, and men and women who cannot make ends meet because they have lost wages through sickness or accident, are prone to become discontented and make trouble. Improper housing, insufficient amusement, lack of care in illness, poor food — all these things tend to lower industrial efficiency. Mr. Johnson and the men working with him saw that Kingsport alone could not provide the means of making itself the city they want it to be. So they decided on the insurance plan, whereby, in reality, they formed a partnership with the life insurance company for the purpose of bringing Kingsport up to their expectations.
>
> Each employing corporation sent out to its employees a statement setting forth the general plan of the insurance. This statement announced that an arrangement had been made with the Metropolitan Life Insurance Company

---

[1] Writing in *Business*, August, 1920.

of New York for life, health, and accident insurance for each employee who was at work on the previous July 1, the insurance becoming automatically effective from that date. The entire cost of this insurance was borne by the employing corporation.

The insurance company regards the Kingsport undertaking as of great value in demonstrating what may very widely be done. "We propose to show the nation," it says, "what it is possible to accomplish in the preservation of health and life in an intelligent community when the proper steps are taken."

Housing activities

The administration of housing activities by the Improvement Corporation has produced results that make Kingsport, in the quiet beauty and charm of its residence sections, compare favorably with some of the celebrated model communities in England. Mr. Clinton Mackenzie, the architect, has made his work seem a natural outgrowth of the plan. The dwellings range in size from three to eight rooms. A six-room house is rented at twenty-five dollars a month. A man may buy his home for a moderate cash payment, with subsequent installments through a period of fifteen years. The Improvement Corporation sells the houses at cost plus 6 per cent. The prevailing price for years was in the neighborhood of twenty-five hundred dollars. The purchaser gets a finished house with tastefully planted grounds. A trained woman landscape gardener gives all her time to the planting of shrubs and trees. The highest-grade houses, designed for the higher-salaried employees, cost between nine and ten thousand dollars. This means more than this amount in value, owing to the production of so much of the building material in the neighborhood. In some of the houses, as an experiment, the kitchen has been located in the front; the mother can thus keep an eye on her children at play outdoors and enjoy the sight of what is passing; it is also convenient for the delivery of supplies.

Of Mr. Mackenzie's work, Mr. Charles C. May says:[1]

> The range of house types is very great, as is the variety and freedom of architectural style. There are several types of small cottages, even three-room bungalows, and from them all the way up to the pretentious two-story, porched house, with six good-sized rooms; there are Colonial farm-house types, there are numbers of units which are independent of local tradition, and there are

---

[1] Writing in the *Architectural Forum.*

several cottages in which an ingenious, restrained use of vertical battened boards, together with an overhanging second story, gives a look which is reminiscent of the Tyrol.

Materials locally produced

The extensive production of Portland cement at Kingsport has greatly reduced local building costs. The city has wide concrete sidewalks and several miles of broad, concrete-paved streets. The cost of this concrete pavement was only $1.35 a square yard. Other locally produced building materials are proportionately cheap.

Under a scheme of coöperative teamwork, devised by experts, an enormous prevention of industrial waste has been effected. One factory supplies another. The industrial alcohol plant, the dye works and the pulp mill all get their needed lime from the cement works. The tannery supplies the harness factory with leather; the tannery gets its needed extract from the extract plant, which turns its chips over to the pulp mill. Building materials are supplied to all the local industries by the cement and brick works; the utilities company supplies power and water. The dye company supplies the hosiery company with dye and the pulp company with bleaching powder. Furthermore, expansion plans for new industries have been worked out: a fertilizer plant to utilize the regional deposits of potash and phosphate and the tannery refuse; a packing house to stimulate cattle raising and produce fertilizer material. The wood-alcohol plant's charcoal is to be used in a charcoal iron furnace.

The Kingsport Press has established its full right to the title of book manufacturer. It depends for its employees almost wholly on the native population, who have been drawn from their mountain homes. The plant has had a remarkable development. Closely associated with it are a pulp mill and a paper mill, to the advantage of all. The press today has a daily capacity of seventy-five thousand hand-bound books.

A most gratifying outcome of all these activities that have built Kingsport into an almost ideal industrial city is the intelligent and public-spirited interest in community affairs shown by the exceptionally capable working population, which realizes that it has a stake of its own in it all.

The community and the plan

The region where Kingsport stands lies thirteen hundred feet above sea level, in a fertile agricultural country. The climate is equable. The site is equally well adapted to good residential and industrial life, under urban as well as rural conditions. The white population is at present entirely native American, of what is commonly termed Anglo-Saxon stock. Neither interracial nor international difficulties have yet presented themselves to complicate the social and political scheme of the community.

The plan gives due consideration to the colored population, which, being uncommonly high class and industrious, is esteemed accordingly. Appreciating the value of the colored element in the local labor situation, Kingsport aims to counteract the tendency to migrate to the North, by developing its colored section, in marked contrast to the squalid "nigger-town" districts so common in southern communities. Here the colored people have had comfortable new houses built for them, with modern improvement. In this section the playgrounds, schoolhouses, and churches have been planned for in ways commensurate with the advanced standards set for the rest of the community. This attractively developed housing area assures its population a worthy place in the social organization.

One of the first steps taken for the development of the site was the division of the new city into well-recognized zones for the several forms of use. This was done according to the enlightened modern practice now recognized by recent legislation in several states of the Union. Areas were thus allotted respectively to factories and industrial plants, to wholesale trade, to retail trade, to residences, and to public buildings, schools, parks, and playgrounds.

Industrial development and housing accommodations were the two main factors. The manufacturing plants thus far located occupy districts where they cause the least annoyance to the public, while securing the maximum industrial efficiency as regards both transit accommodation and availability to the homes of the workers. The residential tracts are kept away from the smoke, dust, noise, and danger of the industrial plants. In general, the broad streets with good paving for vehicular and pedestrian movement proclaim something unusual in workmen's surroundings. Each street, planted with shade trees, offers to the section where the working classes live a restful seclusion that is commonly a feature of only the higher-class residential districts of an industrial community.

3. SOME PROBLEMS IN NEW PLANNING[1]

By Louis Brownlow

Municipal Consultant, City Housing Corporation, New York City

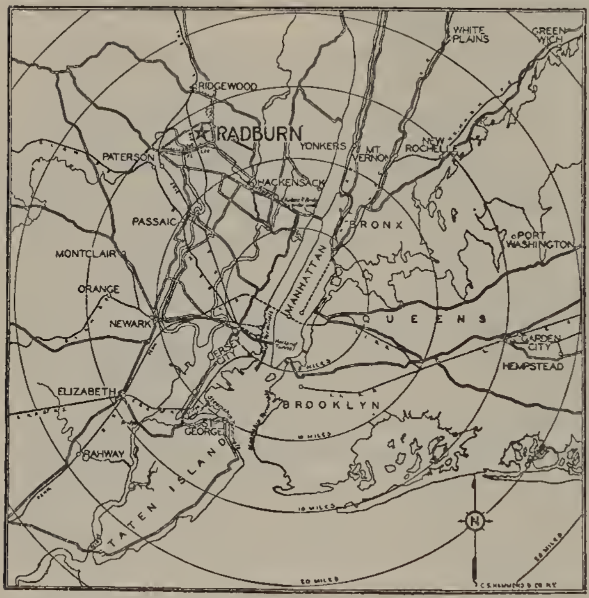
The problems presented by new planning for towns and cities and regions are so numerous, so complex, so intricately interlaced with all the other problems of our modern life, that to attempt even so much as to catalogue them would prove a difficult task for the technical town planner, and the result would be nothing to the layman but a dismay and a hopeless horror. Being myself a layman and not a town planner, for the purposes of this paper I shall select but a very few of the problems that at this time may interest both the technician and the layman, and in discussing them confine myself to the experience, realized and impending, of Radburn. I indulge the hope that, in the discussion to follow, light may be thrown upon these and related problems from the experience gained in other places.

It seems necessary, therefore, since I am to draw upon Radburn for illustrations of the few problems I am to outline, to give in a few words the setting of the Radburn scene.

Radburn we call the town planned for the motor age. It is a town only in the sense that it is, or will be, an urban community. Politically, it is a part of the Borough of Fair Lawn, in Bergen County, New Jersey. Geographically, it lies within the North Jersey sector of the metropolitan region of New York, quite near the industrial cities of Paterson and Passaic, the residential city of Hackensack, and the suburban town of Ridgewood. Topographically, it is situated on rolling land within sight of distant hills, and lies from fifty to a hundred and more feet above sea level. Historically, it has been the home for nearly three centuries of a sturdy folk of Dutch origin, the influence of the Hollanders having been kept fresh in each generation by new immigration from the Netherlands, and two of the principal fixed highways which we found ready-made to our hand in Radburn are plainly to be seen on the maps prepared for General Washington by the geographer of the Continental armies. Socially, the background has been entirely agricultural, the community life finding its home in the Grange Hall, the accepted standards being highly individualistic and the contacts with New York very largely only through the economic nexus of Gansevoort Market.

---

[1] Reprinted from *Bulletin No. 4*, National Conference on City Planning, June, 1929.


WHITE PLAINS
GREENWICH
RIDGEWOOD
RADBURN
YONKERS
MT VERNON
NEW ROCHELLE
PATERSON
HACKENSACK
PASSAIC
BRONX
PORT WASHINGTON
MONTCLAIR
ORANGE
MANHATTAN
NEWARK
QUEENS
GARDEN CITY
HEMPSTEAD
ELIZABETH
BROOKLYN
ST GEORGE
RAHWAY
STATEN ISLAND
10 MILES
20 MILES
N
C.S.HAMMOND & CO NY

RADBURN IN RELATION TO THE NEW YORK METROPOLITAN REGION

The historical and social background is of little account in considering our present problems, except for the prime fact that it is responsible for the wide expanse of farms, cut only by a few widely separated narrow roads, leaving this tract here — within fourteen miles of Times Square by air line, within seventeen miles of the Jersey City Terminal of the Erie by railroad, and within ten miles of the Jersey end of the new Hudson River Bridge — a virgin territory upon which a new town plan might be laid with a minimum of difficulty in adjusting the scheme to existing streets and structures.

This, then, was the site selected by the City Housing Corporation upon which to build its new town planned for the motor age. It is unnecessary here, I am sure, to say that City Housing Corporation is a limited dividend company formed five years ago by Alexander M. Bing and a group of associates for the purpose of building better homes and better communities, or that its first experiment at Sunnyside Gardens in Long Island has proved a success. Mr. Bing, his associates, and his advisers, were, I believe, inspired by the example of the garden cities of England

and desired to do something looking in that direction within the New York region. Here the permanent agricultural belt was not practicable, and Radburn is not to be, in the strict sense, a garden city.

Radburn will occupy the lands purchased by the City Housing Corporation — two square miles — and probably will extend in influence, if not in precise pattern, to the adjacent lands owned by others. It is to be a city of from twenty-five thousand to thirty thousand people.

So the scene is set.

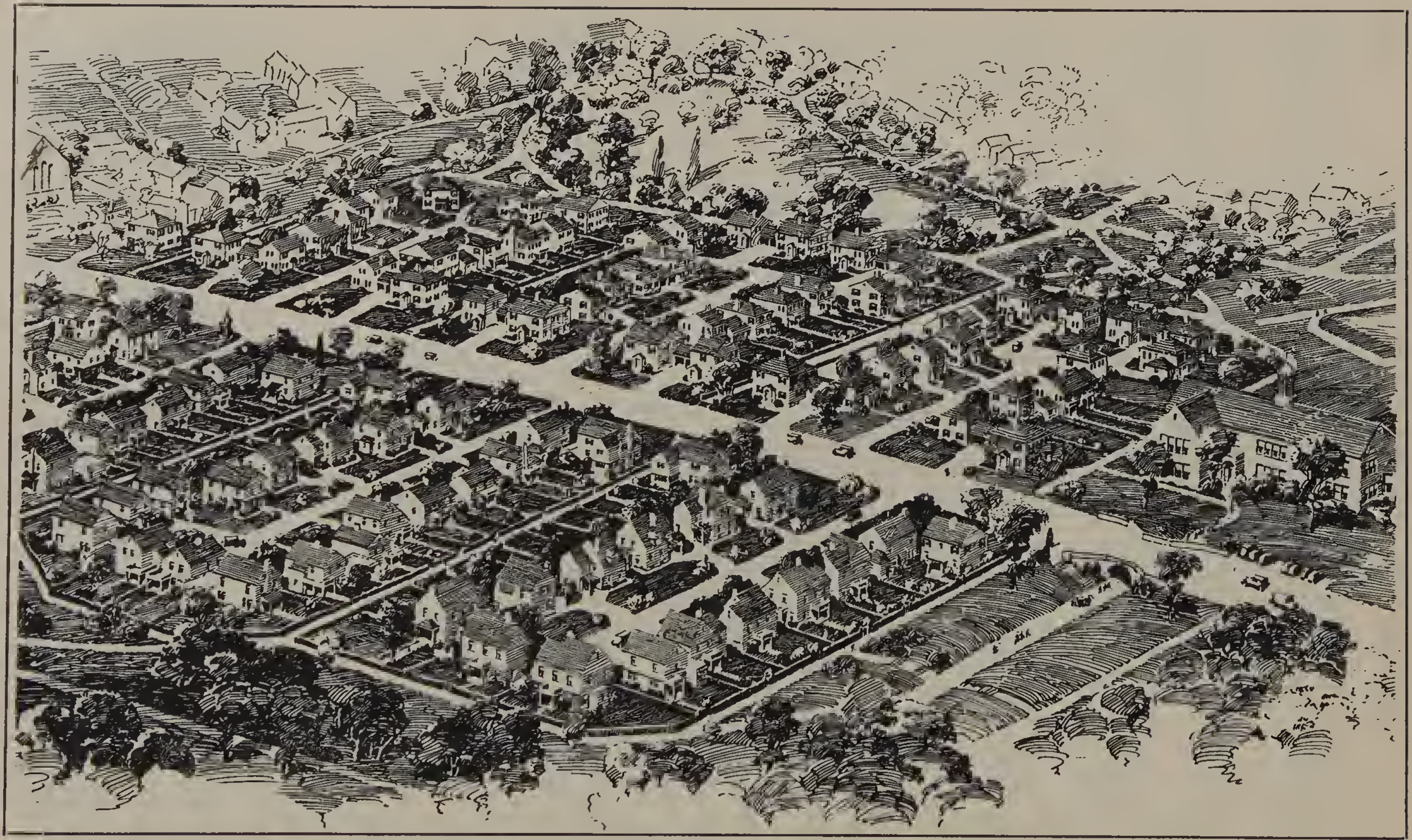
The persons of the drama have been assembled by City Housing Corporation. Responsible for the enterprise, its financing, and its major decisions, are Mr. Bing and the Board of Directors. Clarence S. Stein and Henry Wright, architects associated, are the town planners. They have had as consultants Frederick L. Ackerman, Robert D. Kohn, and Thomas Adams. To carry the whole into execution, City Housing Corporation has its own staff of administrators, construction executives, engineers, lawyers, and the like. Many experts in the field of municipal government, recreation, health, education, and so on have been consulted. To attempt to apportion among so many the responsibility for particular features of the plan, physical or community, is not within the scope of this paper.

From amongst the maze of problems presented in Radburn or encountered there, I shall select but three to talk with you about: first, the street and park pattern; second, the division of the town with respect to use, residential, commercial, and industrial; and third, the governance of the town and its community organization. No one of these can be exhausted nor all of its implications considered: I shall give but the bare bones.

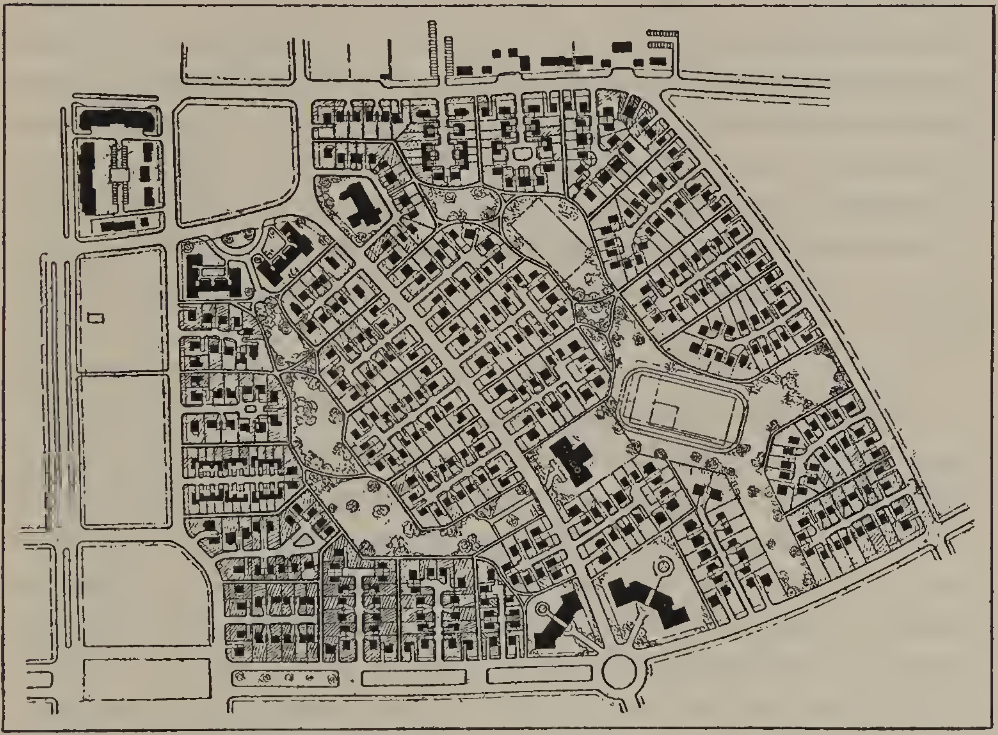
A pattern for streets and parks

I do not know for what the checkerboard street pattern was planned. Perhaps for the horse and buggy. Perhaps for the convenience of the engineer. Perhaps for the handiness of the 25-by 100-foot lot. Perhaps it just happened. At any rate it is the conventional and usual pattern for streets in our American towns. Its relation to the pattern for park lands is usually incidental.

In Radburn, to be planned deliberately for the motor age, two things



Radburn, New Jersey, Built for the Motor Age were chiefly to be desired: first, the maximum convenience for the use of the motor car for business and pleasure; and, second, the reduction to the minimum of the dangers attendant upon such use. Consideration for the health and happiness of the people who were to live in the houses also brought the problem of the provision of park spaces into the foreground.



Courtesy of the City Housing Corporation.

Two Super-Blocks at Radburn

Showing the grouping of houses about closed streets in each block, the ample space for parks and recreation, and the system of footpaths for pedestrians separate from the vehicular ways. The street in the center of the plan is the one shown in the drawing on the opposite page.

To a town, the street system is both the skeleton and the circulatory system. The street itself has many functions, above, beneath, and on its surface. But aside from drainage, its principal surface functions are three in number. Two of these are ancient, classic, and first to come to mind when one hears the word "street." They are the functions of traffic — traffic awheel and traffic afoot. Usually we separate the parts of the street devoted to these two functions; run a raised ribbon along either side of the street, call it a sidewalk, and devote it to foot traffic; pave the wider strip in the middle and devote it to wheeled traffic; however, mingling the two at intersections some sixteen or eighteen times in a mile. When urban land is intensively used, the surface of the street has a third important function, and we have found no way to separate a part of the street for this new use. It spills over the sidewalk and the roadway. It is play. Play in the streets is dangerous to children and an impediment to wheeled traffic, and the attempt to use the same space for both brings tragic consequences into thousands of American homes every year.

At Radburn, in its residential portions, the planners have redistributed the functions of the street, they have made a new segregation of street space, and they have rearranged the relation of street space to park space.

Essentially the scheme is based on the use of a unit which, for lack of a better name, we call the super-block. The super-block consists of a central core of open park land rimmed by a public street devoted entirely to foot traffic or play, this core being surrounded by a series of lanes or *culs-de-sac* — short streets devoted entirely to wheel traffic, closed at the interior end, but open to and connecting at the outer end with the wide highway which surrounds the whole super-block and which is again devoted exclusively to wheel traffic.

The houses are grouped around the lanes, so that each house fronts upon two streets, one a relatively wide street for wheel traffic and the other a quite narrow street for foot traffic. The great motor highway surrounding the whole super-block sends its tributary streets inward toward, but not to, the park core; the footway rimming the park sends its tributary sidewalks out to the outer rim.

The central park core and its rimming footway send out arms to the boundary, and there the footway and a ribbon of parkway dive under the motor highway through an underpass to connect with the park and footway system of the next super-block.

In this manner the footways and the motorways are quite separated. Groups of these super-blocks in their turn will center about a school and playfield as the focal point, and to this school and playfield any child may walk from his home in comfort and in entire safety, so far as the threat of the motor car is concerned. And yet each house has its motor street, too, and most of them have a garage built into the house, as much a part of the house as the dining room.

This means that instead of grouping the park lands according to any usual manner, they have been distributed throughout the residential parts of the town.

The effect may be observed from the angle of the householder. He has two fronts to his house. One gives upon a public street dedicated to the municipality and devoted to wheel travel. The other opens upon a public street, also dedicated to the municipality, but devoted to foot travel. He will not be, in any case, farther away than four hundred feet from a principal motor highway. And he will not be farther away, in any case, than four hundred feet from a park. The closer he is to one, the farther away he is from the other, of course, but it is never more than four hundred feet.

If for any reason his child plays away from his own yard, whether for companionship, for leadership, or just for fun, the child has a place to play in the park and on the footway where no motor vehicle can menace him. If he plays in the motor street and gets run over, it will not be because no other place has been provided for him.

I am bold enough to predict that the planners in Radburn have opened the way for a revival of pedestrianism as a pleasant form of exercise. Think of taking a walk in town today — step down from this curb, wait minutes for the traffic signal to change or else dart out amongst the speeding cars, up on the curb on the other side, and then repeat, sixteen or eighteen times a mile at each intersection. In Radburn one will be able to take a walk, say in another year, and stroll for some miles on a sidewalk without ever stepping down from a curb or up on to a curb and without ever being in a place where a motor car can be — and all the time on a public street, lighted by public lighting, but bordering, not a wheel-traffic roadway, but a park.

That such a radical departure from the conventional street pattern had an interesting effect on house design follows as a matter of course. The house has two fronts, no back. It has two front yards, no back yards. It has two principal entrances — a motor entrance and a pedestrian entrance. These things have improved the opportunity for designing small houses in groups for the wider vision and at the same time have added to the opportunity for design for each house seen as a single unit. That the architects and builders already have taken advantage of many of these new opportunities for the moderate-priced houses that have been built in Radburn is evident to the visitor at the first glance.

This new street and park pattern has justified itself also on the score of economy, as well as with respect to safety, convenience, and beauty. The scheme requires less land for the streets than the conventional checkerboard, and the land thus saved goes far toward providing the park space. The grouping of the houses tends to shorten the lines of the utilities, thus introducing further economies, so that we may say that the new pattern saves rather than spends.

Commerce and industry

Thus far I have talked only of the residential sections of Radburn. Radburn is planned for a population of about twenty-five thousand people on the land now owned by City Housing Corporation. In a sense, it is designed as a satellite city. It is not to be, according to plan, a mere dormitory for New York and for the neighboring cities of New Jersey, but is to have its own commercial and industrial sections, and to be, as far as is possible, a self-contained town in which workers may live near their work. At the southerly end of the town a definite reservation for industry has been made, although as yet only one establishment has been built there. The planners have been at pains to relate that industrial section to the other portions of the town by adequate highways and will provide suitable housing for workers not far away.

The commercial needs of the town are to be provided for in local community shopping centers, in sub-business centers, a part of one of which already has been constructed, and in a central business area related to the civic center of the entire town.

Definite plans are not so far developed for this chief center as in the case of the residential portions of the town, but certain things are to be provided. One of these is open space, both in wide streets and in parks. Another is the convenient approach by traffic ways to local business places without interfering with rapid through traffic. And another is to find in a measure the soothful answer to that deep and passionate longing of the modern American — him who sings:

> This is the place I long have sought,
> And mourned because I found it not —
> A place to park!

Here again the use of the interior of the block in a new relation to its perimeter will, we believe, be useful, economical, and not ugly. The business blocks will have a central core of parking space or garage space, bringing parking close to the store, as in the residential area the green park was brought close to the home.

There is no zoning ordinance in the Borough of Fair Lawn, and therefore the use of the police power to control the uses of property is in abeyance.

In Radburn it is planned, for the present at any rate, to accomplish zoning by contract. The restrictions in the deeds of houses sold as residences and the restrictions to which the whole lands, park and otherwise, in the residential sections are subjected, forbid the use of the land for any but residential purposes.

Sites for industrial purposes have been sold and will be sold subject to certain restrictions as to the type of industry — excluding the nuisance types — and subject to certain architectural control and community obligations.

Commercial property — stores and the like — will not be sold, but will be retained by City Housing Corporation as an investment, and also because this is the only means that has been suggested for effectively controlling the number and type of stores.

Commercial property of other kinds — such as office buildings for public utilities and the like — will be sold subject to restrictions which in sum amount to zoning by contract. Such a system of use-zoning requires, of course, much thought and makes a heavy draft upon the prevision of the planners. On the other hand, it admits of a refinement of zoning that under the police power might very well be questioned in the courts as being too arbitrary.

So here again, in this field of zoning-by-contract, there seem to be possibilities for increased convenience, decreased costs, and added beauty.

Government and community organization

Another of the many problems which we have considered is that of local government and the organization of the community life.

Radburn as a city of twenty-five thousand people is perhaps ten years in the future. A year ago it was, except for some lands bought, some money risked, and some blueprints, altogether in the future. At the present moment, however, Radburn is in being. About two hundred single-family houses are under construction, half of them nearly completed. A store and office building is almost finished. There are some miles of streets and footways, of water pipes, sewers, gas mains, electric lines, and the like. Parks and playgrounds are nearing the stage of usability.

In short, on what were last August nothing but fallow fields, now there is a town in sticks and stones.

As yet it has few people. There are a few pioneer families already living in Radburn, almost before we were quite ready for them. To these people and to those who come after them, Radburn is not a housing project nor an essay in town planning. It is a town in which they have bought a house in which to make a home. From their point of view the municipal housekeeping problem is both imminent and immanent.

They are the beginnings of a living social entity which will be known by the name of Radburn. Politically, they are citizens of the Borough of Fair Lawn and, after the necessary time of probation, will be voters in Fair Lawn. The borough has an area of a little more than five miles, about one-third of which is Radburn. (The Radburn property extends also into two other boroughs, Glen Rock and Paramus, but most of it and all that presently being developed is in Fair Lawn.) The borough has a population of about fifty-five hundred, and nearly two thousand votes were cast in the last local election, an indication of a lively political interest. The government under the mayor and council has been very friendly to the Radburn project, and this spirit of coöperation seems to actuate all factions and parties of the local community.

But a borough so largely rural could not provide at the beginning the full measure of municipal services required by Radburn. It is to be borne in mind that when we undertake to build a planned city such as Radburn on an urban scale on land that heretofore has been entirely agricultural, we accelerate the normal process of evolution by telescoping through two well-defined stages — the semi-rural and the suburban.

In Fair Lawn there was no public water supply, no sewage system, and but meager provision, according to urban standards, for police and fire protection, health service, and the like. In the field of education the situation was much better, a good school system being provided.

For the protection of the property and for the nurture of the community life, several things had to be provided. One was the machinery for enforcing the protective restrictions of the deeds, giving architectural control in the community interest, use-zoning, and so on. Another was to supplement the municipal services being provided by the borough so as to meet the needs of the more intensively developed Radburn section. The third was to provide certain services not yet within the scope of the municipal activities.

To accomplish these purposes, The Radburn Association — a membership, non-profit corporation — was set up. It has accepted the responsibility of enforcing the restrictions incorporated in the deeds and the declarations of restrictions. It has taken title to the park lands to be held for the use of the people of Radburn. It has undertaken to provide supplemental municipal services — as for instance in the case of garbage, where the municipality provides one collection per week and The Radburn Association supplements it by another, giving twice-a-week collection.

Much study was given to many instances of such government by contract as exist in various parts of the United States, and many ideas previously tested were incorporated in this system, which I think is most interesting.

At the beginning The Radburn Association consists of nine members, part of them members of City Housing Corporation and its staff and part of them representative civic leaders of northern New Jersey. Eventually the power and responsibility of The Radburn Association will be devolved upon the residents of Radburn, but we have not attempted to say in advance exactly when nor in precisely what manner.

The Radburn Association derives its revenues from a charge fixed annually by it upon properties in Radburn subjected to the declaration of restrictions, but which charge can never exceed one-half of the taxes for public purposes. The rate is fixed by the Association and the base used is that of the assessment by public authority for public taxation.

In form, the Association is modeled upon the council-manager plan of municipal government, the policy-determining function and the fiscal control being in the hands of the members of the Association acting through trustees chosen by them; the administrative and executive functions being discharged by a manager chosen by the trustees.

Here, then, is an attempt to solve a problem that has vexed almost every municipality in the whole country. The problem has been stated succinctly in this form: "How can a neighborhood within a municipality carry on a more advanced form of living than the municipality as a whole is ready to afford?" The answer often has been a dejected negation. It often has been an unfair and unjust favoritism which has been both the cause and the result of municipal political corruption. It sometimes has been achieved by means very much the same as we have attempted for relatively small, high-class residential sections of cities. By means of The Radburn Association it is hoped that a just and equitable balance may be struck between those services that the entire municipality affords and those augmented or more advanced services which the urbanized section of Radburn requires.

It is also the concern of The Radburn Association to foster the organization of the community life in such manner as will best, in conjunction with municipal, county, state, and national government, promote the health, the education, the prosperity, and the happiness of the people of Radburn. Operating side by side, we shall see two schemes of government by consent of the governed — in one the consent being expressed through the ballot box and in the other by acceptance of a deed to land. I believe they will supplement and complement each other, and that one — government by contract — will be a proving ground for more advanced services for the other — government by ballot.

At any rate these things have been begun. Radburn was a dream. Radburn is being realized as a reality. Just now, toward the end of the first year of a programme of building that will require from eight to ten years, Radburn is partly a dream, partly a plan, partly a reality, partly a pattern in materials, partly a community of souls. But Radburn is more than this — it is a challenge. In Radburn the town planner has dared, and the builder and financier have enabled him to do this thing: To prove in a living city that *Design and Control* will make for greater health, greater convenience, greater economy and greater beauty than ever can be realized by *Drift and Complacency*.

LXIV. PUBLIC BUDGETING

1. THE SIGNIFICANCE OF PUBLIC BUDGETING[1]

By A. E. Buck
National Institute of Public Administration

Public budgeting is the process by which the financial policy of a government, including its monetary requirements, is formulated, adopted, and carried into effect. This process is by no means a simple affair. It involves all the departments and agencies of the government through which moneys are raised or expended; it touches all the economic resources of the community or of the country which are taxed for the support of that government. From an operating standpoint, public budgeting requires technical ability on the part of administrative officers; executive skill in determining the needs of governmental agencies, together with a thorough grasp of the problems of taxation; coöperation between the executive and the legislative body in planning; and systematic organization of governmental machinery, aided by modern financial methods. When properly instituted and administered, the budget is the most effective means yet devised for the establishment of control over the public purse. Viewed in this light, it becomes a powerful factor in the maintenance of modern government; indeed, its influence extends to the very roots of organized society.

The essential features of public budgeting

There are two essential features to the process of public budgeting: (1) a comprehensive financial plan, and (2) a procedure for devising, authorizing, and executing this plan. These combined features constitute the budget system.

The financial plan is, strictly speaking, the budget. It sets forth the complete monetary requirements of a government for a definite period in advance and, in so doing, balances the expenditure needs with the anticipated income.[1]

---

[1] Reprinted by permission of the author and the publisher from *Public budgeting*, Harper and Brothers, 1929, pages 3–9.

Budgetary procedure involves the bringing together of estimates covering the multifarious needs of a government, the checking of these estimates against recorded expenditure data, the calculation of the government's income in the light of past experience, the preparation of the budget and supporting measures by the responsible executive or other agency of the government, the adoption of the budget and the enactment of bills designed to carry it into operation by the legislative body, and, finally, the execution of the budget by the executive or the administrative officers in accordance with the authorizations of the legislative body. Briefly, these are the main steps in budgetary procedure. Such procedure is really cyclic in nature, going through all its phases once in the course of each fiscal period.

It is for the reason just stated that budgeting has been regarded as being purely an annual or biennial affair. But this is not the case. Budgeting for the going concern of government is a continuous process: one budget is being prepared while another is being executed. In this way, the budget system helps to maintain continuity of policy in spite of the frequent changes in official personnel which occur under our form of government.

Fiscal and legal characteristics of the budget

While it is possible to define the budget in a single sentence, as we have done above, such a definition needs amplification if it is to be clearly grasped. Perhaps this can best be done by pointing out what the budget is and what it is not.

In the first place, the budget is a *plan* — a plan of action for a government looking toward the future. As Gaston Jèze, the noted French writer on the subject, very well says: the budget is not to be confused with a balance sheet, a statistical summary, or a financial statement.[1] A balance sheet merely sets forth the financial condition of the government as it exists on a certain day. A statistical summary shows what has happened in the finances of the government over a period of years. A financial report is a statement of expenditures and receipts during a *past* period, a recapitulation of financial experience. All this information is valuable and may be used in the preparation of the budget, but this does not change the general character of the budget. It is essentially a plan for the future. Furthermore, this plan should be comprehensive; that is, it should include all the financial requirements of the government to which it relates, showing the total estimated outgo balanced against the total anticipated income for the future period.

---

[1] F. A. Cleveland has defined the budget as "a plan for financing an enterprise or government during a definite period, which is prepared and submitted by a responsible executive to a representative body (or other duly constituted agent) whose approval and authorization are necessary before the plan may be executed." ("Public budgets," *Annals*, American Academy of Political and Social Science, November, 1915, page 15.) This definition really outlines the whole process of public budgeting.

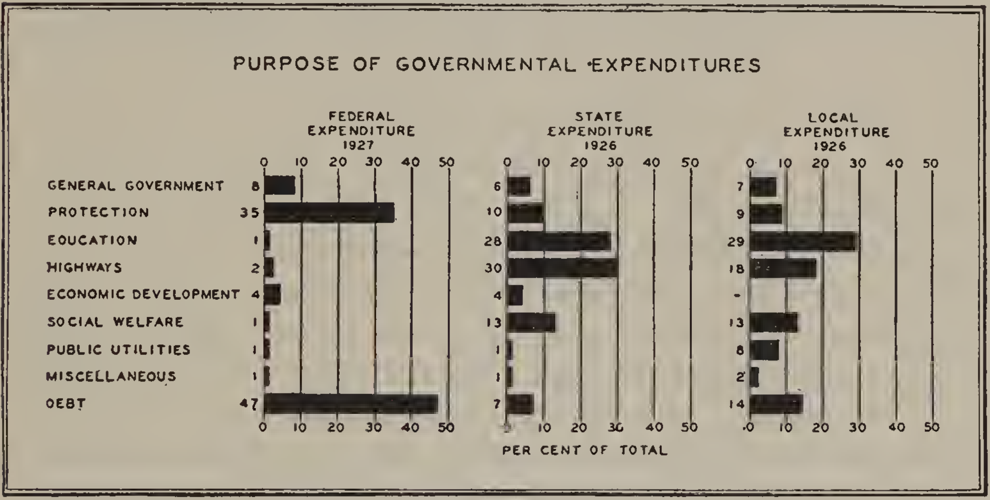
In the second place, the budget is not merely a preliminary proposal; it is, as we have just indicated, a plan of action. One American writer on public budgeting has said that the budget is "the administrative experience of the last or current fiscal period systematized and organized for presentation to the legislature, together with recommendations as to expenditures and revenue for the forthcoming fiscal period."[2] According to this definition, the budget is largely a financial report with proposals for the future period attached. As we have already stated, the budget is more than a financial report; likewise, it is more than a set of proposals for the future period. The preparation of proposals by a responsible governmental authority, assuming that these proposals represent a financial plan and not a random list of recommendations, is only the first of a number of stages through which the budget passes before it is finally realized. To begin with, the financial plan is formulated by the executive, or other governmental agency, and transmitted to the legislative body. The plan may be modified by the legislative body in the course of consideration, after which it is adopted by the passage of appropriation bills and revenue measures. Then the plan is said to be authorized, and the executive or the administration takes it up for execution. During its execution, the plan may again be subject to certain modifications as the forecasts for the fiscal period become actualities. In all these stages the financial plan, either proposed, or authorized, or being executed, may be regarded as the budget. It is the budget in the course of formulation, or authorization, or execution, but none the less the budget.

---

[1] See Gaston Jèze, *Théorie générale du budget*, 1922, pages 7–8.

[2] E. A. Fitzpatrick, *Budget making in a democracy*, 1918, page 11.

Finally, the budget is without any legal status in the United States. In other words, the financial plan contained in the budget is never enacted into law as such. At first blush, this may sound ridiculous, but let us explain. When the budget is submitted to the legislative body, it may carry with it an appropriation bill or bills, also revenue bills, which that body is required to act upon. If the budget does not carry such bills, then the legislative body prepares them through one of its committees. These bills, not the financial plan contained in the budget, are then enacted into law by the legislative body. Hence, the expenditure side of the budget may be found in one or several Appropriation Acts. These Acts may be either annual or permanent; in the case of the national government, for example, many of the appropriations are authorized by permanent Acts. Likewise, the income side of the budget may be found in several Tax or Revenue Acts. These Acts are usually permanent, especially in the national and state governments; only in the local governments are they, to any great extent, annual. This means, in many cases, that, for part of the expenditures and nearly all of the revenues, the budget, as proposed, is based on authorizations already made by the legislative body. In such cases, the budget, as adopted, is essentially an administrative plan, since the legislative body has taken



very little legal action in connection with it, previous appropriation and revenue Acts standing unchanged. The reason, therefore, for referring to the budget, when proposed to the legislative body, as a document of information becomes quite apparent once we understand the legal significance which attaches to it in this country. But this does not in any wise lessen the great importance of the budget, as a document; it is, indeed, an indispensable instrument in the budget system.

Political and economic aspects of the budget

As we have indicated above, the budget is a powerful instrument in establishing popular control over the public purse. This is apparent from the history of budgetary development in England. After a long struggle, lasting for several centuries, the representatives of the people in Parliament gained a dominant position in the control of the government. In the course of this struggle the budget was evolved as a means of furthering this control. It is now universally recognized as the most important proposal that comes before Parliament during the year. The responsibility for formulating and proposing the British budget rests upon the executive, composed of the cabinet, which stands or falls upon its budgetary proposals. Days and even weeks are consumed in considering and discussing the budget in the House of Commons. Newspapers throughout the British Isles comment upon the action which Parliament takes on each major division of the budget. If, in the end, the executive is not sustained in its proposals, the Cabinet may resign and carry the matter to popular vote. This permits the people to participate directly in determining the financial policy and requirements of their government.

Because of the structural differences in our system of government, we have not been able to move along exactly the same lines as the English in our budgetary development. Nevertheless, it has been possible for us to augment official responsibility and popular control through the application of the budget system. New types of organization and more businesslike methods have already come into being, particularly in our state and local governments. Administration is rapidly changing in response to the demands for effective financial planning and control. A new type of public official has recently appeared; one that does not rely on back-slapping, hand-shaking, and backstairs negotiations as being the royal road to power and prominence, but upon a broad knowledge of administration, especially public finance and budgeting. The budget system is also bringing our legislative procedure into bold relief, the result being that in many governmental jurisdictions this procedure has been greatly improved. No longer are the old "dark room," "gag rule," and "pork barrel" methods regarded as being proper in the handling of legislative business. The people now have a better opportunity, through the newspapers and otherwise, to know what their government is doing, and are therefore able to express their wishes through the ballot to a better advantage. Of course, all this recent improvement in the machinery and methods of government cannot be directly credited to the budget, but it can, at least, be said that budgeting has been a potent factor in bringing about these changes. And the future promises still more improvement in these directions.

COST OF GOVERNMENT, 1890–1926 *
In Millions of Dollars

	1890	1903	1913	1923	1926
Federal..........	$291	$475	$692	$3,885	$3,936
State............	77	182	383	1,244	1,546
Local............	487	913	1,844	5,136	6,141
Combined........	$855	$1,570	$2,919	$10,265	$11,623

* From *Cost of government in the United States, 1926–27,* National Industrial Conference Board.

Turning to the economic aspects of the budget, it is evident that the cost alone of carrying on the divers operations of our various governments places them in a class with the gigantic private corporations and businesses of this country. Hundreds of thousands of persons (we do not know the exact number; probably it is in the neighborhood of three million) are employed by the governmental units of the United States in carrying on the various public functions. Perhaps the total pay roll for public employees — national, state, and local — exceeds $4,000,000,000 a year. Thousands of different kinds of supplies and materials costing millions of dollars are purchased annually for use in governmental work. Aside from these services and commodities, there are sundry other things for which the various governments spend money each year. In fact, the total expenditures of all governments — national, state, and local — within the United States for the year 1926 has been estimated at $11,627,000,000, or a per capita of more than ninety-nine dollars. That the annual financing of this enormous expenditure raises economic problems of the first order cannot be denied. It touches and effects all business, industry, and commerce within the country in one way or another. On this point, John W. Hills, the skillful writer on English finance, says:

> The state does not earn money but takes it. It should not take more than it needs, for its income is a burden upon its subjects. The justification and the measure of this burden must be the value of the services provided. A state is not prosperous when its income is great, but when its expenditure is wise and efficient, and when the benefits from that expenditure outweigh the load imposed by its income. Taxable capacity must only come in to fix the outside limit. If we proceed otherwise, we approach national finance from the wrong end. Incidentally we run the danger of thinking that the more the state can raise, the more prosperous it is. And when we have reached that point, we are putting out upon a sea to which there is no shore.[1]

THE LUMP SUM BUDGET

From the Philadelphia budget of 1911:

Postage, ice, files, incidentals, meals, repairs, advertising, loans, and entertainment of city and visiting officials	$25,000
Rent, postage, horse keep, and miscellaneous expense in survey districts	25,000

From the Chicago budget of 1909:

For repairs and renewals of wagons and harness, replacement and keep of live stock, identification, police telegraph expenses, tents, repairs, renewals of equipment, hospital service, printing and stationery, secret service, light and heat, twenty-five more horses for mounted police, and for repairs of Hyde Park station; also other miscellaneous expenses	$205,000

Practical advantages of budgeting in government

It remains . . . to point out some of the practical advantages which result from the application of public budgeting. The recipients of these advantages in any government are mainly three: (1) the government's executive and administrative officers, (2) its legislative body, and (3) its citizens and taxpayers. We shall now indicate briefly just what the advantages are with respect to each group.

---

[1] John Waller Hills, *The finance of government*, 1925, page 5.

Budgeting is a great help to public administrators because it substitutes planning for chance in operating the departments and agencies of the government. Under budgetary procedure the administrator must make a forecast of his expenditure needs; he must think of the activities which he is going to carry on in terms of their cost; he must formulate a plan of work and follow it, making only such changes during the year as are necessary to meet new and unexpected conditions. The formulation of the budget requires the chief executive, or other responsible agency (assuming there can be such an agency other than the chief executive), to view the needs of the departments and agencies of the government as related to each other and to the whole organization, and then to regard the total expenditures for all purposes from the standpoint of the means available to meet them, the determining factor being the balancing of proposed expenditures with anticipated income. This effort to produce a complete picture of the financial requirements of the government is valuable not only from the standpoint of the chief execu-

THE SEGREGATED BUDGET

From Chicago budget for 1922:

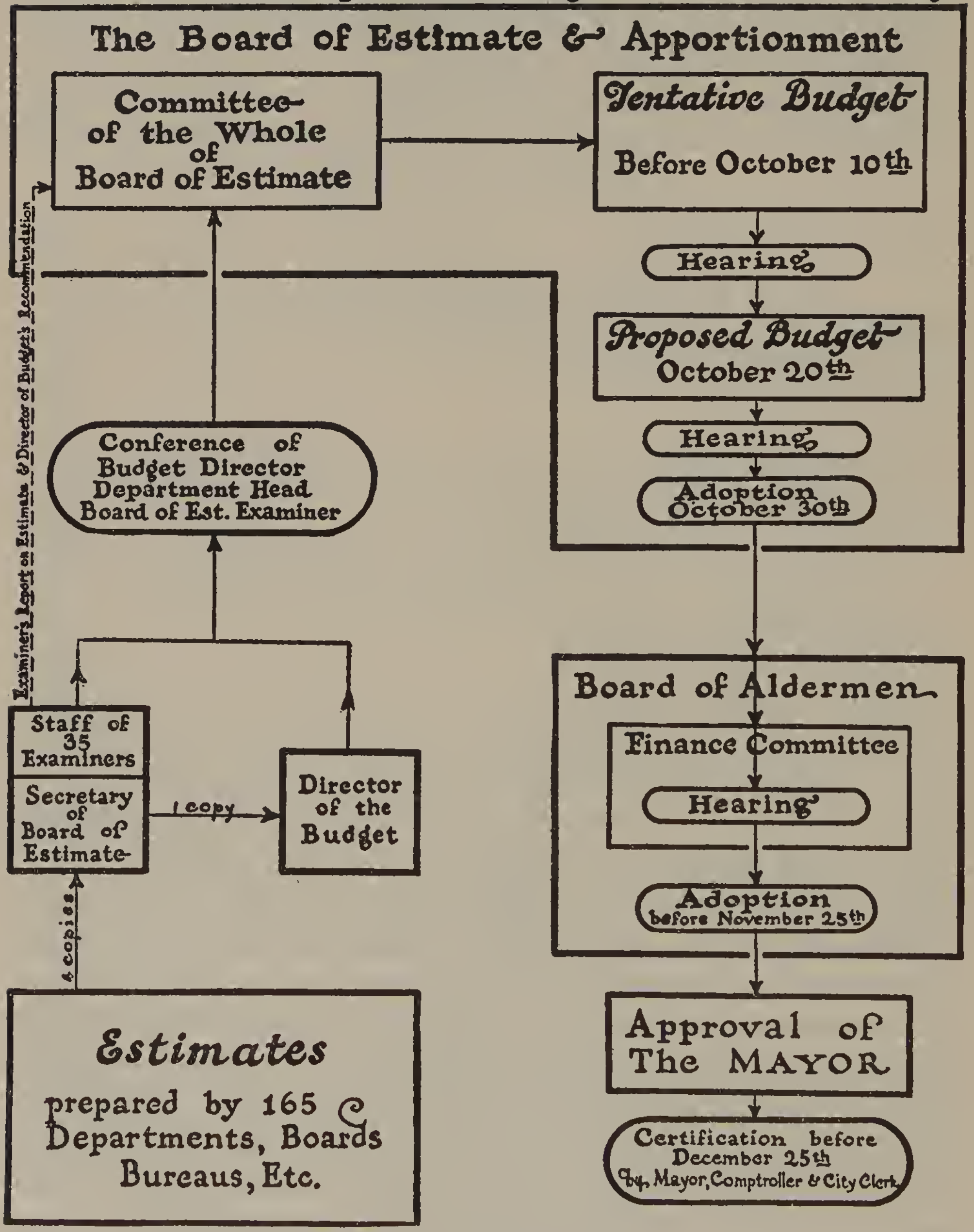
Operation of Police patrol wagons

Personal service *	
Permanent salaries	$49,000
Contractual services	
Repair of autos	3,000
Other contractual services	100
Materials and supplies	
Gasoline	6,000
Lubricants	400
Metal products	300
Rubber auto tires	400
Other materials and supplies	200
Total	$59,000

---

* The New York State and City budgets are completely detailed as to salaries.

Procedure of Adoption of Budget in New York City


The Board of Estimate & Apportionment
Committee of the Whole of Board of Estimate
Tentative Budget
Before October 10th
Hearing
Proposed Budget
October 20th
Hearing
Adoption
October 30th
Conference of Budget Director Department Head Board of Est. Examiner
Examiner's Report on Estimate & Director of Budget's Recommendation
Staff of 35 Examiners
Secretary of Board of Estimate
1 copy
Director of the Budget
4 copies
Estimates
prepared by 165 Departments, Boards Bureaus, Etc.
Board of Aldermen
Finance Committee
Hearing
Adoption
before November 25th
Approval of The Mayor
Certification before December 25th by Mayor, Comptroller & City Clerk

This chart was prepared by Mr. McGoldrick for *The finances and financial administration of New York City*, published by the Columbia University Press, 1928.

tive but also from that of each departmental head, since the budget relates departmental needs and tends to prevent one department from getting funds at the expense of other departments. Under the budget system the work of the government is regarded as an integrated whole and not as so many separate activities, thus making possible businesslike management by the executive.

Without a budget the members of the legislative body have no real basis for intelligent action on the fiscal policy of the government. It is through the budget that expert advice on financial requirements is presented by the executive to the legislative body. The members of this body generally know very little about these requirements as a result of actual contacts with the administrative departments and agencies; only the officials who direct the departments and agencies can know fully the needs of their work. A further difficulty from the standpoint of legislative members arises because of the fact that the work of the government is, for the most part, highly technical and quite complex. For this reason, if for no other, it is very desirable — in fact, necessary — to have a plan formulated by the executive, setting forth the administration's needs and supplying the facts to support its requests. Furthermore, such a plan requires the legislators to think about the various activities of the government as parts of a greater whole; it helps them to comprehend the ramifications of governmental work and to compare the revenues and other resources of the government with its expenditure needs. Thus the budget system is of great practical value to members of the legislative body in determining the fiscal policy of the government.

Finally, the budget is a powerful aid to citizens and taxpayers. It enables them to know how much money is being raised for the support of the government and the purposes for which every dollar of it is to be expended. When properly prepared and thoroughly discussed before the legislative body, it is a most valuable source of public information. The press is aware of this fact and rarely fails to give space to the news growing out of the discussion of the budget. The upshot of this is that citizens generally are beginning to show considerable interest in the financial condition and operations of their government. This augurs well for the future success of the budget system in this country.

2. A SAMPLE BUDGET

BUDGET OF CITY OF TRENTON, NEW JERSEY, 1928–1929

Appropriations	*Year ending Dec. 31, 1929*	*Year ending Dec. 31, 1928*
Public affairs —		
Director	$15,800.00	$14,600.00
City clerk	13,785.00	13,985.00
City counsel	16,356.25	20,556.25
Overseer of poor	62,650.00	60,150.00
Weights and measures	4,220.00	3,755.00
Municipal colony	185,022.36	173,340.53
Elections	5,047.26	5,105.36
Municipal markets	7,965.00	7,670.00
Harbor	7,660.00	8,805.00
Total	$318,505.87	$307,967.14
Revenue and finance —		
Director	$5,500.00	$5,500.00
Comptroller	10,815.00	10,400.00
Treasurer	8,770.00	9,202.50
Receiver of taxes	20,165.00	19,640.00
Assessors	18,610.00	19,610.00
District court	14,985.00	14,405.00
Total	$78,845.00	$78,757.50
Public safety —		
Director	$11,270.00	$11,170.00
Health	112,188.39	111,086.46
Fire	629,640.62	576,258.11
Police	678,829.55	586,691.51
Garbage and ashes	159,682.00	162,275.00
Police court	10,900.00	10,400.00
Police and fire telegraph	71,482.68	54,266.00
Dog catcher	3,600.00	3,100.00
Total	$1,677,593.24	$1,515,247.08
Public works —		
Director	$6,100.00	$4,500.00
Streets	374,932.00	375,413.00
Sewers	9,650.00	6,100.00
Sewer maintenance	48,070.00	47,229.00
Sewage disposal	54,550.00	56,803.00
Snow removal	10,000.00	10,000.00
Total	$503,302.00	$500,045.00

Parks and public property —			
Director		$9,788.00	$11,068.00
Parks		133,964.00	106,632.00
City hall		50,480.00	62,106.00
Playgrounds		45,276.00	37,800.00
Public comfort		18,200.00	19,025.00
Building inspector		18,000.00	17,400.00
Lights		230,060.00	230,234.00
Shade trees		11,525.00	5,795.00
Total		$517,293.00	$490,060.00
Non-departmental —			
Contingent		$13,000.00	$13,000.00
Interest on bonds		642,673.15	615,117.05
Interest on temporary loans		75,000.00	75,000.00
Sinking fund requirements	$92,781.93		
Less surplus	25,000.00		
		67,781.93	58,882.70
Bond redemptions		304,000.00	307,200.00
Art school		45,600.00	44,100.00
Public library		113,400.00	108,806.00
Discount on tax		108,000.00	108,000.00
Reserve for uncollectible tax		25,000.00	25,000.00
Storehouse and repair plant		4,000.00	5,000.00
City planning			2,500.00
Cancellation of street and sewer assessments		434.65	521.20
250th anniversary settlement of Trenton		25,000.00	
Emergency notes		43,000.00	3,516.30
Deficit unexpended balance, acct. 1928		16,718.79	47,206.73
Total		$1,483,608.52	$1,413,849.98
Totals		$4,579,147.63	$4,305,926.70
Public school		$1,714,514.71	$1,698,094.09
Grand total		$6,293,662.34	$6,004,020.79
State school tax		$578,152.07	$546,113.14
County tax		1,072,892.33	1,038,777.04
State road tax		208,646.70	204,880.88
State soldiers' bonus tax		30,273.52	30,606.36
State institutions tax		104,323.35	102,440.44
Totals		$8,287,950.31	$7,926,838.65

Tax rate —	*Year ending Dec. 31, 1929*	*Year ending Dec. 31, 1928*
Departmental	$1.34361 — 1,000	$1.26922 — 1,000
Non-departmental	.64610 — 1,000	.62060 — 1,000
City school approp.	.74420 — 1,000	.74527 — 1,000
City rate	$2.73391 — 1,000	$2.63509 — 1,000
State school tax	.28008 — 1,000	.26837 — 1,000
County tax	.51975 — 1,000	.51048 — 1,000
State road tax	.10107 — 1,000	.10068 — 1,000
State soldiers' bonus tax	.01466 — 1,000	.01504 — 1,000
State institution tax	.05053 — 1,000	.05034 — 1,000
	$3.70	$3.58

3. THE PRACTICAL SIDE OF BUDGET PROCEDURE[1]

BY CHARLES D. NORTON

Vice President, First National Bank, New York

To regard government as a business enterprise merely, would be a narrow and illiberal view, for the activities of government are undertaken, not for purposes of profit, but to enhance the safety and the welfare of citizens. It is for the voters or their representatives to decide what activities the government shall undertake. Once the government has embarked upon any definite enterprise, however, a question fairly arises as to the merits of the administration; and for the purpose of examining results and measuring efficiency of administration, it is proper to consider that a constitutional government is a corporation organized to carry on public business. The managers of a public corporation have much the same kind of business problems as the managers of private corporations. They must make plans and provide the means of carrying them out. Public officers, however, are hampered by constitutional and charter restrictions which make it difficult, if not impossible, for them to execute their plans as efficiently as do the managers of private business.

When the president of a large business corporation goes before the annual meeting of his stockholders or directors, he makes a statement of the assets, the liabilities, the surplus, and the profits of the year. The figures are so displayed that they tell their own story and show the results of the year's operations. He states what his plans are for the next year's work; whether he wishes to expand or contract the business; what he wishes to spend in permanent improvements; what new capital he needs, and how he proposes to raise it. He is ready to answer questions and to explain his plans and policies. That statement is his "budget." If approved, it becomes his programme for next year's work.

---

[1] Reprinted from an address delivered before the Academy of Political Science, November 19, 1914.

If the natural businesslike relation which exists between the head of a private business and his directors and stockholders can be created between the governor and the legislature, and if this relation can be defined in the constitution of the state, a budget system will certainly be the logical outcome. At the present time our Federal, state, and municipal charters and constitutions have surrounded government executives with fantastic regulations which, if applied in private business, would certainly wreck any enterprise dependent for its existence on yearly profits.

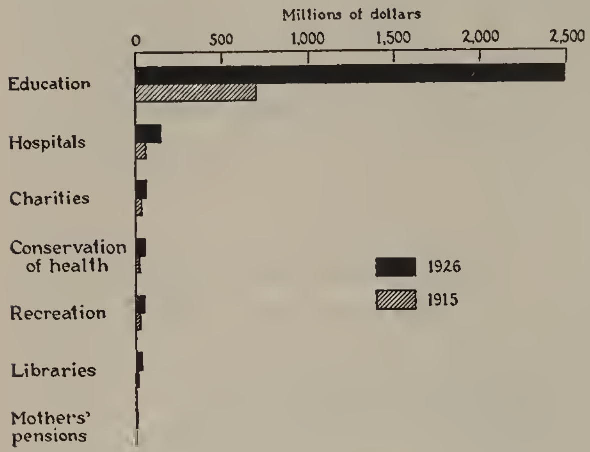
Above all, it is most important to realize that the making of a budget is essentially an executive function. The oldest standing order of the House of Commons, dated July, 1713, is:

> The House will receive no petition for any sum relating to public service, or proceed upon any motion for a grant or charge upon the public revenue unless recommended by the Crown.

That order is the foundation of efficiency in the English public service; upon that foundation a budget system is firmly placed. The House of Commons demands and secures a budget which is a clear, understandable, well-indexed document, and the representatives of the Crown who make the budget appear in person before the House to explain it. The House of Commons, like the board of directors of a well-conducted private English business corporation, controls the purse, but has deprived itself of the privilege of dipping into it.

Our difficulty is that, as a general rule, the man at the top — president, governor, or mayor — is not entrusted with sole authority to formulate and to amend the financial programme of the year; he and his assistants are not permitted to appear in person to explain and to defend his programme; so that he cannot be held personally responsible for good or bad results.

Congress, legislatures, city councils, exceed their proper function with respect to finance, which is to vote or to refuse to vote public moneys for the estimates submitted by the responsible executive. As a rule, they reserve to themselves the power to introduce appropriation bills without first securing executive approval. These appropriation bills are divided up into sections quite arbitrarily for hasty consideration among many subcommittees, who work without coordination with each other. "Log-rolling," "riders," "pork barrels," and immense public expenditures are the logical and inevitable results in our public business. What private corporation could survive such procedure on the part of its directors? What man of ability and character would retain the presidency of a private business corporation in the face of such dangerous practice on the part of his directors?



Data source: *Recent economic changes*, Vol. I, page 19.

Total Expenditures for Free Social Services by 48 States and all Cities with a Population of Over 30,000

Guardians of the treasury, possessors of the power to levy taxes, our legislators — national, state, and municipal — fritter away their proper and supreme control of the executive. By meddling with his authority they release him from personal responsibility for public expenditures. They sell their birthright for a mess of pottage. What they gain is the right to "logroll" or get "pork" for constituents; what they lose is responsible and efficient government.

LXV. PUBLIC CREDIT

1. THE PURPOSES AND CONSEQUENCES OF PUBLIC CREDIT[1]

By Harley L. Lutz
Professor of Economics, Leland Stanford, Jr., University

The true function of credit is to serve as a supplement of the other sources of public revenue. The question then arises as to the circumstances under which it is legitimate for a state to borrow. In other words, what are the conditions under which the use of this supplementary resource are proper and justifiable? We shall assume the legitimacy or the propriety of the expenditure, so that the problem becomes that of the choice of the means by which the necessary funds shall be provided. This choice ordinarily lies between loans and taxes.

It is evident that practical expediency will always play a large part in this matter. After the tax burden has increased beyond a certain point there can be little question, either, of a real choice between the two means. The loan will be used if it can possibly be floated. Politicians are usually fairly clever in gauging the popular inclination, and they would be the first to realize the practical unwisdom of increasing taxes as compared with the (temporarily) easier method of loans. There have been conspicuous instances of the failure of this political hypothesis, as in the North's disapproval of Secretary Chase's loan policy during the Civil War. But granting that there is still a real choice open as between loans and taxes, the problem then is: When is it financially legitimate for a state to borrow?

Borrowing for emergencies

In the first place, it is always permissible to borrow to cover a deficit resulting from an unforeseen emergency. Increased taxation is usually not adequate for such situations, for some time is ordinarily required to get the tax machine running at higher speed, while the emergency calls for prompt action. Moreover, tax increases cannot always be made at a moment's notice, on account of the desirability of preserving the balance of the revenue system. The increase of existing taxes may mean that a portion of the taxpayers are compelled to pay the cost of the emergency, while a new and broader tax requires time to become fully productive. Borrowing appears to be the only feasible method of providing immediate financial relief in a serious emergency situation.

---

[1] Reprinted by permission from H. L. Lutz, *Public finance*, D. Appleton and Co., New York, 1925, pages 519–534.

Beside borrowing, there is the alternative possibility of carrying a treasury surplus which could be drawn upon in case of need. In addition to the difficulty of accumulating the surplus, there is the danger that it may prove an incentive to greater legislative extravagance. The history of the Federal surplus revenues reveals how readily Congress has responded to this invitation to greater expenditures. Adams was so skeptical of American legislatures on this point that he believed a continual deficit to be about the only means of impressing them with the need to economize.

It should be said, however, that the regular recurrence of a deficit in the ordinary revenues cannot be met indefinitely by means of borrowing. Such deficits promptly lose their emergency character. If the expenditures are not kept down to the revenues, then the latter must be increased. Borrowing is permissible for the purpose of meeting the occasional emergency deficit; but if the shortage becomes habitual, it is an indication that more revenue must be obtained. Borrowing to meet habitual deficits is merely the use of public credit to pay current expenses.

It is permissible also to use loans in financing an emergency the cost of which is so great that taxation alone will not suffice. Modern warfare is so costly that the corresponding adjustment of the tax system has not usually been achieved, and an extensive, even an excessive, use of credit has frequently resulted. . . . Borrowing, in proper relation to taxation, is permissible and proper in the face of such an emergency as war ordinarily presents.

The propriety of borrowing for the purpose of enabling the state to embark in commercial enterprises which may pay a return sufficient for interest and depreciation charges on the capital invested will depend upon the quality of public management and the other circumstances which may be considered of sufficient weight to justify the undertaking. Many factors contribute to the financial success or failure of a public ownership venture, such as the capacity of the public administration in a given city or country, the policy of rates and charges which the public insists upon, and the degree to which the public enterprise operates under monopoly or competitive conditions. From the strictly financial standpoint it seems to be of doubtful propriety to borrow capital funds for investment in publicly owned and operated commercial enterprises unless these can be, and actually are, managed in such manner as to provide income sufficient to cover all necessary depreciation charges as well as the interest on capital. A community is always competent, politically, to decide upon the policy to be followed in the management of its commercial activities, and there may be numerous instances in which indifference to cost is justifiable. . . . Evidently, however, this policy cannot be extended indefinitely. The deficits must be met by the general taxpayers, and a limit is reached presently to their ability to carry the burden. It would seem wiser as well as sounder policy to adopt a general rule of financial self-sufficiency for such enterprises, and to permit of departures from this rule in the interests of the consumers of the product or the beneficiaries of the service only under special and unusual circumstances.

There remains the question of the use of public credit to finance those projects and activities which are of general social advantage, but which do not afford any opportunity for a direct financial return. Highways, education, sanitation, public philanthropy, and recreation are among the more important of these social activities and functions. How far is it proper to use public credit in providing the funds for these services?

No categorical answer can be given to this question. If we distinguish between the current and the capital expenditures for these and similar activities, it is possible to say at once that, except for the most genuine cases of unforeseen and unforeseeable emergencies, it is suicidal folly for a government to create permanent or long-term debt for the payment of current expenses. The line between current and capital expenditure is not always clear-cut, so it becomes necessary to establish this distinction somewhat arbitrarily at certain points. This is most conveniently done, perhaps, by taking a certain time limit or period of usefulness for all supplies, equipment, and materials purchased, and declaring that all expenditures for whatever purposes, the results of which have a period of usefulness less than this minimum time, shall be treated as current expense.

Borrowing for capital outlays

The case of capital outlays for such improvements as school buildings, hard-surfaced roads, hospitals, and other permanent equipment is one on which it would be difficult to secure unanimity of opinion. Nor is the matter entirely clear from the standpoint of principle. If the debt maturities are arranged in accordance with the probable life of the improvements, and if the bonds are always redeemed and never refunded, a case can be made out for permitting the necessary funds to be raised by means of loans. The advocates of the loan policy for such improvements will contend that the taxes required to pay interest and sinking fund charges on the unredeemed installments of the debt would be balanced by the loss to taxpayers that would result if a very much larger tax levy were made outright in order to pay for the improvements in cash as they are constructed. If the outlay is so large that the tax would seriously retard industry and initiative, this position is doubtless well taken. Credit enters as the useful and necessary supplement to current revenues for the purpose of spreading the burden over time, and so, in reality, of lightening it.

But it is also contended that the cash payment method deprives the taxpayers of the opportunity to invest that part of their incomes otherwise taken by the heavier taxes, and so over twenty years the real loss to the community is said to be as heavy as if a loan were made and the people were taxed for twenty years to pay the interest and redemption charges. For example, a school building may cost five hundred thousand dollars. Unless statutory limitations on the tax rate interfered, a city might levy enough in one or two years to pay for such a building in cash when it was completed. On the other hand, it might issue twenty-year bonds in payment. The tax levy for each year of this period would be increased by an amount necessary to redeem one-twentieth of the principal plus interest on all unredeemed principal. If the method of heavy taxation is used, the community is deprived outright of a large sum which it might have invested productively during the twenty years. On this reasoning, the advocates of a liberal use of public credit seek to demonstrate that the policy of heavy taxation involves a loss that is, in the end, about equal to the cost of the loans.

This argument in favor of borrowing for capital outlays has a certain validity, especially if we grant that the community is one the members of which are keenly interested in increasing their investments and are devoting all available income to this use. But against the argument are two strong practical considerations. First, the heavier taxes required to pay the interest and sinking fund charges are a certainty, while the gains which the taxpayers as a whole may realize by retaining and compounding their unpaid, heavier taxes (in case the loan is made) are rather uncertain. Indeed, it is highly improbable that the whole of this theoretical advantage will be realized, except by those whose taxes run to large amounts and who are constantly on the lookout for the opportunity to save and invest at every turn. To the extent that this possibility is not actually realized, the loan method does involve a heavier burden in the end.

In the second place, the community which has adopted the loan method of financing all of its permanent improvement projects will find that in time it has about used up its available credit resources. Such a community is thus placed at a distinct and possibly a very serious disadvantage whenever a genuine emergency does appear. Public credit, we repeat, is not an unlimited resource. Rather, it is a limited resource the supply of which should be conserved in the main for those circumstances and requirements which cannot be fitted readily into the normal scheme of current expenditures and revenues. If it is used for defraying costs which should really be met out of current revenues, there will be no reserve protection against real emergencies. Since it is probably more costly to finance needed improvements in this way, a community which yields to the temptation to do so is inclined, without realizing it, to live beyond its means.

The rapid development of modern social organization, and the growing complexity of modern social life, have been very largely responsible for the scale of living which has been forced upon all nations and all communities within the nation. This pressure has driven the smaller and financially weaker states and communities into a volume of expenditure that is really beyond their means, and in order to maintain the pace they must borrow while their credit resources last.

The use of public credit to finance those improvements which are really in the nature of an extraordinary outlay becomes more nearly justified in the case of the smaller community. This brings us to the distinction between ordinary and extraordinary expenditure. Capital improvement expenditure becomes extraordinary and may be provided by means of loans if the outlay is so large as to impose an excessive burden on the resources of the community. We are dealing in relative terms here, but there are practical signs which will guide the way. For example, when a city of, say, five thousand population needs a new high-school building, or a new hospital, such an expenditure may properly be regarded as extraordinary. It occurs, for a town of this size, only once in a generation. The cost would impose so heavy a burden on the resources of the community, if levied outright as a tax, that the resort to public credit is proper and justifiable. On the other hand, a large city such as New York, Cleveland, or San Francisco must provide several school buildings every year while the school population continues to grow at its present rate. Under these circumstances the expenditures for public buildings become current, normal, or ordinary expense, and should be met from current revenues. It is a foolish use of credit for large cities to build schoolhouses by such means, while it is a reasonable use of credit in the case of the smaller community. It probably costs more in the end to get school buildings in that way, but we have here one of the legitimate uses of public credit, which is that of supplementing and extending the purchasing power of the community in securing those things which must be had but for which the current tax revenues are inadequate to provide.

The application of this distinction will naturally involve difficulties, since there is no sharp line to be drawn between those cities which are small enough to treat a certain outlay as extraordinary, and those for which the same outlay would be a current expense. The soundest general principle in solving this practical difficulty is the pay-as-you-go policy, according to which public credit is relegated to its true sphere of supplementary current revenues.

The economic effects of public borrowing

The economic effects of public borrowing will vary with circumstances. These effects are not regular and constant for all instances of public borrowing, and it is necessary, therefore, in attempting to estimate the economic consequences of the use of public credit to take into consideration the attendant circumstances and conditions. Among the more significant of these conditions are (1) the volume of the loan and the sources of the funds which it absorbs; (2) the application of the proceeds; (3) the rate of interest; and (4) the terms and method of repayment. These will be discussed in order.

It is apparent that the size of the loan will be an important factor in determining its economic effects. If the loan is small, it will be taken out of a part of the free funds which are always seeking investment, and the general effects on industry, prices, and other economic conditions will be negligible. Within limits, the modern capitalistic community appears to be able to provide whatever volume of funds there is opportunity of investing, and a small government loan is met by this elasticity in the capacity for saving.

As the government's demand increases in amount, the effects become important, and they may in time become serious. It is possible that the loan funds requested may be provided by greater saving or by reduced personal expenditure on the part of individuals. As long as the necessary amounts can be provided from these sources, the economic effects of the loan will be largely confined to the industries or to the commodities affected by this voluntary curtailment of private spending. The enlarged government expenditure may be of such a character as to equalize this loss in the demand for labor, and little effect may be noted on wages, prices, employment, or on the general level of profits. If the government demand becomes still greater, so that it begins to divert some of the capital funds otherwise destined for the replacement and the extension of the community's capital equipment, the ultimate effects of this withdrawal may be very serious. A nation whose capital apparatus is in good condition at the outbreak of a war or other emergency involving large governmental expenditure may be able to get along for a time without maintaining the customary flow of capital replacement funds and not suffer losses which cannot readily be made good after the emergency has passed. But the prolonged diversion of the capital funds required for the maintenance and extension of the nation's capital means in the end a double loss; it means the loss of the capital goods which fall into disrepair and eventually into complete decay, and it means also the drying up of future sources of private and public income.

The effects of credit inflation

A government which requires large sums for emergency purposes may endeavor to secure these without subjecting individuals and industries to the sacrifices which are involved in rigorous abstinence such as we have just suggested. Purchasing power may be called into existence *de novo* equivalent to the sums demanded, by the creation of bank and other credits instead of by an actual saving out of income.

The effects of this method of providing the loan funds depend on the degree to which the creation of government credits is balanced by a reduction of commercial credits. If the latter does not occur — and the feverish industrial activity of war times usually affords sufficient basis for the lapse — the government credits are new credits, secured by the bonds or notes which the government issues to the banks. Credit expansion brings price advances, and a rising price level in turn produces very extensive economic readjustments throughout the community. Eventually, if this process is carried far enough, serious credit inflation may come to pass, with the result that the government may be unable to check the process and restore the normal value of its currency by deflationary measures. Germany today presents a classic example of excessive credit inflation. In addition to the bank operations, a number of special types of credit institutions were established for the purpose of extending credits in the form of notes for circulation issued on the security of all sorts of personal property. The fruits of this tremendous inflation are still being garnered, in the high prices, depreciated currency, and enormous budget deficits of recent years.

No country engaged in the war was entirely free from the credit inflation which followed the effort to create purchasing power on the security of the government loans, although Russia, Germany, and Austria doubtless carried this method of war financing to greater extremes than any other belligerents. Some use was made of it in the United States, and the resulting inflation, while not sufficiently serious to make national bankruptcy imminent, was keenly felt in the tremendous price advance and the generally increased cost of the war which followed this inflation of prices.

The reason that such a method of credit financing is so dangerous is that it inevitably leads to price increases, with all of the inequality among different economic classes which sudden dislocation of the price level always involves, to say nothing of the progressive increase in the cost of the war or other emergency financed by such means. In the early days of our own war financing, there was a determined effort to keep private industry and business going on as usual. This agitation tended to dissuade the people from saving for the purpose of buying bonds, and made the use of bank credits more certain as the war progressed. The use of the small denomination bonds as currency was discouraged and eventually checked by the Treasury Department, but the Liberty Bonds and Treasury Certificates were perfectly acceptable as collateral for bank loans, and the currency inflation that was checked in one way was accomplished in another. In connection with the Third and Fourth loans, banks were virtually requested to loan to subscribers at an interest rate not in excess of the coupon rate borne by the bonds. Back of the member banks in this policy were the Federal Reserve banks, but it meant in reality that the government was supplied with funds by the banks instead of by the individual subscribers to the bonds. The only funds in possession of the banks, however, were the banks' credit dollars which were created on the security of the nation's gold reserve and the government war paper. It has been estimated that at the close of the war the banks of the country held more than five billion dollars of undigested war securities.

The full economic effects of our policy of public borrowing by means of credit inflation during the war have not yet been appraised. W. C. Mitchell has estimated the increased cost of the Civil War due to credit inflation and price advance to be nearly six hundred million dollars, or upwards of one-fourth of the total cost of that war. If the same ratio of increased cost due to inflation be assumed for the recent war, it is clear that the burden was increased by many billions of dollars.[1] In addition to this we must consider the effects of the rapid price advance upon the different classes in the community. Great hardship upon all classes receiving fixed incomes, labor unrest and discontent, excessive profits to the entrepreneurs — these were among the more conspicuous consequences of the credit inflation and the price advance.

We conclude, therefore, that the economic effects of a policy of public borrowing on a large scale will be very much more serious if the loans are made on the basis of inflated bank credits with the resultant price inflation than if they are paid for out of actual savings. . . .

Productive and unproductive loans

The economic effects of a public loan, in so far as the effects of application may be distinguished from those pertaining to the original flotation, will depend upon the character of the undertakings which the government is financing by means of loans. These payments become a part of the total public expenditures, and the expenditure of the proceeds of loans may be classified according to the same scheme as that which we have already outlined in our discussion of public expenditures. That is, the money secured by public loans may be spent (1) productively or (2) unproductively. The productive outlays may be such as will provide to the state a return in money (reproductive expenditures), or they may simply add to the general social well-being and increase indirectly the wealth of the state by enlarging the opportunities for more efficient and economical production.

There can be little doubt concerning the proper decision to be reached as to the economic effect of loans the proceeds of which are spent in unproductive ways. Such expenditures are clearly wasteful, and it matters nothing whether the money spent in wasteful ways is provided by loans or taxes. Waste is waste, and no government can make such an expenditure appear less wasteful by borrowing the money. Borrowing is, if anything, more wasteful than taxation, since the loan involves the long period of interest payment in addition to the original principal which must be repaid. Paying interest on wasted money is well-nigh the supreme irony of fate.

---

[1] Professor Bogart has calculated the additional expenditures of the Federal government due to war activities to be $32,080,265,000 for the three years 1917–1919 inclusive. This total includes the advances to the Allies. See E. L. Bogart, "Direct and indirect costs of the Great World War," *Preliminary economic studies of the war* No. 24, Carnegie Endowment for International Peace, 1919, pages 167, 173.

We are aware that the people may frequently be persuaded to approve of expenditures the character of which is extremely doubtful, if only the funds can be raised by borrowing. There is in general a greater indifference to the cost of government in those instances where the public credit may be liberally drawn upon, and there is frequently a very much lower standard of efficiency in the administration of funds secured through bond issues. The Tammany Hall of older days paid for many of the current expenses of city government, such as horses for the fire department and brushes and brooms for the street-cleaning department, by means of long-term bonds. In more than one state long-term bonds have been used to construct dirt roads, or to make current repairs in all kinds of roads. Indeed, there are very few states in which proper standards of local debt creation have been introduced, so that it appears to be true as a political maxim that the people are very much more indifferent to the cost when the money is borrowed than when it comes immediately out of their pockets in taxes.

As a general proposition it sounds very well to say that borrowed funds which are spent in economically unproductive ways represent a wasteful destruction of society's wealth; but the advocates of the funding system may reply, first, that it is no condemnation of the use of public credit to point out that borrowed money may be spent unproductively, since it is also true that tax receipts may likewise be wasted. The argument is directed against waste in expenditures, and not against public credit. They may also contend that wasteful expenditure has not been defined, and that we are therefore in danger of condemning as wasteful various expenditures which are in the nature of investments by the state. The first of these contentions does apparently leave little to choose as between taxation and borrowing, but it is true that the public at large will view with much less concern the wasteful expenditure of money provided by borrowing then they will display if they are watching their tax money go in such ways. The "pay-as-you-go" plan of government financing has the supreme merit of enforcing stricter standards of economy on public officials, and thus of providing a curb on wasteful or unnecessary expenditures. Borrowing has always been recognized to be the method *par excellence* of providing funds for those expenditures the propriety of which is most open to question.

The second argument has been stressed by the German writers on public finance from the days of Rau and Dietzel, who have regarded the state as part of the permanent capital of society, and public expenditures as a kind of investment in this permanent but intangible and immaterial capital. Large expenditures for army and navy, and even those for conducting wars of aggression, may thus be easily justified as socially productive and advantageous, whereas we should unhesitatingly pronounce these and similar expenditures wasteful. The line between the expenditures to be regarded as wasteful and those that are socially advantageous is not always easily drawn, and circumstances may alter the decision as to where a given expenditure may fall.

With regard to the whole class of socially productive expenditures, however, we abide by the conclusion that the funds for this kind of expenditure should not normally be provided by borrowing. . . .

The expenditure of borrowed funds for capital goods to be used in productive enterprises means simply a transfer of these enterprises from private to public management. There is no economic loss of capital in this transfer, and the main problem will be that of the relative efficiency of public as against private management. If the public management is demonstrably superior, there is a clear economic gain to the community in the transfer, while the loss is equally clear if the reverse conditions prevail. With regard to those improvements which enhance the general social well-being but which yield no direct financial return for the payment of interest and the redemption of the principal, the case is very much less clear for the use of public credit as the means of providing the necessary funds. Theoretically these improvements enhance the well-being and ultimately the wealth of the community. But this gain is indefinite, its extent is uncertain, and the diffusion of its benefits is seldom proportionate to the distribution of the taxes which are required for the interest and amortization payments. In other words, the gain is slow, uncertain, and sometimes remote, while the taxes are certain and immediate. In the face of these considerations, the economic burden of loans incurred for such purposes will probably often seem quite out of proportion to the benefits, and the use of loans for such projects will accordingly seem of much more doubtful propriety.

The economic effects of debt repayment

The effects of the repayment of a loan will, in general, be parallel to those occasioned by the original flotation. The repayment of a small loan can ordinarily be accomplished without excessive taxation, and the process of bond redemption means the transfer of free funds from certain classes of taxpayers to certain bondholders. It is doubtful if one of these groups, on the whole, will make any better — or worse — use of the money than the other would have made, and we may therefore impute a negligible economic effect to the repayment of a small loan. This conclusion assumes that the loan was originally spent for a proper purpose, and that the taxing system by which the funds for redemption were collected was also just and equitable.

The burden involved in the redemption of a large debt increases progressively as the debt rises, on account of the greater difficulty of maintaining the equitable distribution of a large tax burden. A taxation system which would distribute a certain tax load equitably might develop many stresses, strains, and points of evasion as the rates increased.

The economic effects of debt redemption will depend upon the extent to which credit and price inflation have been caused by the method of borrowing or by other circumstances, and the rate at which deflation progresses during the period of repayment. Obviously it is easier to repay a debt while prices are high or are rising than it is while prices are declining. German debtors, public and private, whose debt obligations were written in terms of marks without the precise specification of gold or other standard equivalent, have been able to redeem their debt on utterly ridiculous terms on account of the extreme depreciation of the German currency. Sir Josiah Stamp considers that the desirability of redeeming a large part of the British debt before extensive deflation has occurred is the strongest argument in favor of the proposed capital levy for this purpose. He points out, however, that in so far as the debt paper is held as collateral security for credit, the act of redemption will cause shrinkage of credit. Redemption becomes, therefore, a deflationary force which may possibly result in such dislocation of business as to cause the burden of the remaining debt to be greater than the whole would be if reduced gradually.[1] It would be desirable to have debt redemption proceed at least as rapidly as the deflation process, if this could be achieved, else the interest and sinking fund payments would fall as a progressively heavier burden as prices and profits declined. If the deflation has proceeded so far as to cause a marked decline of the interest rate, it is possible to reduce the annual interest charge by conversion, that is, the exchange of new bonds bearing a lower rate for the old ones with the higher rate, although this procedure requires exceptionally favorable conditions for its successful consummation.

2. CREDIT POLICIES OF THE TREASURY DEPARTMENT[2]

By Andrew W. Mellon

Secretary of the Treasury of the United States

Since the war two guiding principles have dominated the financial policy of the government. One is the balancing of the budget, and the other is the payment of the public debt. Both are in line with the fundamental policy of the government since its beginning.

Alexander Hamilton, whose genius was responsible for the establishment of our financial system, early committed this government to a policy of debt payment and keeping expenditures within income. "It will be the truest policy of the United States," he said, "to give all possible energy to public credit by a firm adherence to its strictest maxims; and yet, to avoid the ills of an excessive employment of it, by true economy and system in the public expenditure, by steadily cultivating peace, and by using sincere, efficient and persevering endeavors to diminish present debts, prevent the accumulation of new and secure the discharge, within a reasonable period, of such as it may be at any time a matter of necessity to contract."

In accordance with this policy the nation from the very beginning began to pay its debts. Under Hamilton's leadership the debts incurred by the various states in the prosecution of the Revolutionary War were assumed by the new nation then struggling into existence, and immediate provisions were made for funding and gradually liquidating these obligations. Hamilton proposed a sinking fund, through whose operation, with later modifications, the debt was discharged within a reasonable number of years.

---

[1] Sir J. Stamp, *Wealth and taxable capacity*, 1922, page 179.

[2] Reprinted by permission from A. W. Mellon, *Taxation: the people's business*, The Macmillan Company, 1924, pages 25–33, 44–47.

War finance policies

The policy thus inaugurated has been adhered to by succeeding administrations. Out of surplus revenues the public debt has been gradually paid off, so that at the time of our entrance into the World War, in April, 1917, the net public debt was slightly more than one billion dollars. The United States followed its traditional policy of financing the war partly by taxation and partly by borrowing. In accordance with this policy the government raised money in the following manner: (1) by borrowing on long-time bonds; (2) by increasing taxation sufficiently to meet all debt charges out of current income; and (3) by issuing Treasury Certificates to raise funds until the proceeds from the loans and taxes should become available.

So far as possible, inflation was avoided by observing the principle that war loans, obtained by credit, must rest on the solid basis of taxation. Taxes were increased sufficiently to provide at least for interest on the loans and payment on a sinking fund which will discharge the debt in a reasonable period. Some inflation, however, was unavoidable, for loans, so far as they are not paid out of savings but by the banks or by individuals with advances from the banks, lead to inflation; and likewise taxes on income, so high that business is forced to borrow from the banks in order to make payment, also add to inflation. Most of the European countries, except Great Britain, attempted to finance the war largely on borrowing. America, on the other hand, attempted to raise one-third of the current war expenditures by taxation. . . .

The cost of a great war, however, cannot be borne entirely by taxes. It must be financed in part by credit, which can be accomplished by long-time loans. In this way, the burden can be distributed over a term of years in such a way that too great payment does not fall on the taxpayers of any one year. Throughout its history the United States has followed the policy laid down by Hamilton of so funding the public debt that it can be liquidated without undue hardship. At the same time, the policy has been strictly adhered to that expenditures for the ordinary operations of the government must be discharged out of current receipts raised from taxes. Part of the public debt must be paid each year out of current revenues, and such debt as is not paid off must be refunded and the whole eventually extinguished by paying from year to year the amounts accumulated in the sinking fund. The amount of the yearly payments must be determined by the taxes levied for the purpose, and the rate of taxation should at no time be so excessive as to discourage the hope of gain on the part of the individual taxpayer.

Many people cling to the old policy that debt retirement is bad for business, being the reverse of inflated conditions accompanying vast borrowings. They hold that new borrowings with reduced taxes are preferable to higher taxes with reduced debts. But a moment's reflection will convince anyone that prosperity cannot come from continued plunging into debt. The present condition of Germany is the best proof of the danger of inflation and financial pyramiding. As a matter of fact, orderly debt retirement out of surplus revenues is better calculated to restore prosperity, for the debt is retired by taxes paid in for the purpose, and the money retained for the payment of such taxes is saved from being dissipated in useless expenditure. The payment of debts is particularly desirable when the nation's obligations, as in the case of the United States, are owed to its own people. All payments of interest and principal are put back into circulation within the country. It may seem to be taking money out of one pocket in the form of taxes and putting it back in the other pocket in the guise of interest and part payment of the principal on bonds. But there are two distinctions to be noted: (1) not every taxpayer owns bonds, hence it is an advantage for the government no longer to support the bondholders by the payment of interest collected as taxes from the nation at large; (2) the payments of principal on bonds are in sums that will find their way back into capital investments, whereas, if no payments are made and taxes remain uncollected, this amount will be dissipated as income in useless expenditures.

The United States has followed a sound policy in regard to payment of the war debt. It has appropriated annually a sum in excess of interest charges, the surplus being devoted to the reduction of the principal of the debt. The keynote of its policy in this regard, as the late President Harding stated in his first address to Congress, has been "orderly funding and gradual liquidation." In the five full fiscal years since the end of hostilities in the World War, the government has been able to balance its budget and the Treasury has therefore been in the position to make important progress within the same period in the handling of the war debt. On April 30, 1921, when the Treasury announced its refunding programme, the gross public debt amounted to about twenty-four billion dollars,[1] of which over seven and a half billion dollars was short-dated debt maturing within about two years. The Treasury was faced with the necessity not only of relieving business of the heavy tax burden imposed during the war but also of retiring or refunding the early maturing debt without disturbance to business and industry.

The Treasury completed during the fiscal year ending June 30, 1923, the first phase of its refunding programme, and by the end of the year all of the $7,500,000,000 of short-dated debt maturing during the previous two and one-half years had been either retired or refunded into more manageable maturities. Except for the issue of about $750,000,000 of 25–30 year Treasury bonds in the fall of 1922, the refunding has all been on a short-term basis, and it has been arranged with a view to distributing the early maturities of debt at convenient intervals over the period before the maturity of the Third Liberty Loan in 1928 in such manner that surplus revenues may be applied most effectively to the gradual reduction of the debt. With this object in view all of the short-term notes issued in the course of the refunding have been given maturities on quarterly tax-payment dates, and all outstanding issues of Treasury Certificates have likewise been reduced to tax maturities. . . .

The retirement of debt

There are two means of debt retirement: first, repayment on loans made to foreign nations; and second, the operation of the Sinking Fund. As regards foreign loans, the law authorizes that repayments may be made in United States government bonds and notes; and such repayments as have been received to date from Great Britain have been almost entirely in Liberty Bonds, which are accepted at par and accrued interest in payment of an equal amount of foreign debt. The Liberty Bonds received in this way by the United States government are immediately canceled and a corresponding reduction made both in the foreign debt and in the public debt of the United States. The transaction is merely a paper one and brings no revenue into the Treasury.

---

[1] According to the President's Budget Message for the fiscal year 1929–1930, the gross debt had been reduced to less than 17.5 billion dollars by June 30, 1928. — The Editors.

It is absolutely necessary that a sound policy of debt retirement be followed and that repayments of the "foreign loans" be applied in reduction of the debt owed by the United States to the holders of Liberty Bonds. The Victory Liberty Loan Act provided for a "Sinking Fund" or annual appropriation which, added to repayments received from foreign governments, would retire the public debt within a reasonable period.

The money represented by these loans to foreign governments was borrowed in the first place by the United States from its own citizens, to whom Liberty Bonds and Victory Notes were given in exchange. The funds, as everyone knows, have already been spent by the foreign debtor nations in the successful prosecution of the war, and, when these funds are repaid to this government, the latter must, in honesty to the holders of Liberty Bonds, buy up and cancel those bonds; or, if repayments are made by foreign governments in the form of Liberty Bonds, then these securities, which cannot be reissued, must be retired and the public debt reduced by a corresponding amount.

In view of the great carrying charge of the debt, it would seem imperative that the debt be reduced as rapidly as possible and that no further obligations be incurred in the form of unusual or extraordinary expenditures. In so far as this government is concerned, its policy has been to keep its own house in order, to maintain the gold standard unimpaired, to balance its budget, and to carry out a reasonable programme for the orderly funding and gradual liquidation of the war debt. It is becoming more and more apparent that the gradual restoration of business and industry in Europe will come not only through the maintenance of sound financial conditions in this country but also in the gradual adoption of similar principles by the governments of Europe, many of which still persist in policies of budgetary deficits and currency inflation.

3. THE GROWTH OF CITY AND STATE DEBTS[1]

By Irving Fisher

Professor of Economics, Yale University

Eighty-three cents out of every dollar of Federal revenues is used to pay for wars, past and future, but practically one hundred cents out of every dollar of state and local revenues is spent for peaceful and constructive purposes.

That is why the national debt may be expected to dwindle, while the local costs of peace and public welfare may be expected to grow. The net state and local indebtedness increased from $3,364,000,000 in January, 1913, to $11,703,000,000 in June, 1927. The Federal debt was reduced from $24,482,000,000 on June 30, 1919, to $18,512,000,000 on June 30, 1927. The contrast has been used to reflect on the thrift of the local governments.

Peace works increase local debts

But in a report showing that the net debt of our cities is definitely upward, C. E. Rightor of the Detroit Bureau of Governmental Research remarks that it "seems illogical to compare the trend of local debt with the downward trend of Federal debt, and infer that the former should also be gradually reduced."

National and local debts are not comparable. Ten years have elapsed since the close of our most expensive war. Naturally, the debt for it has been scaled down.

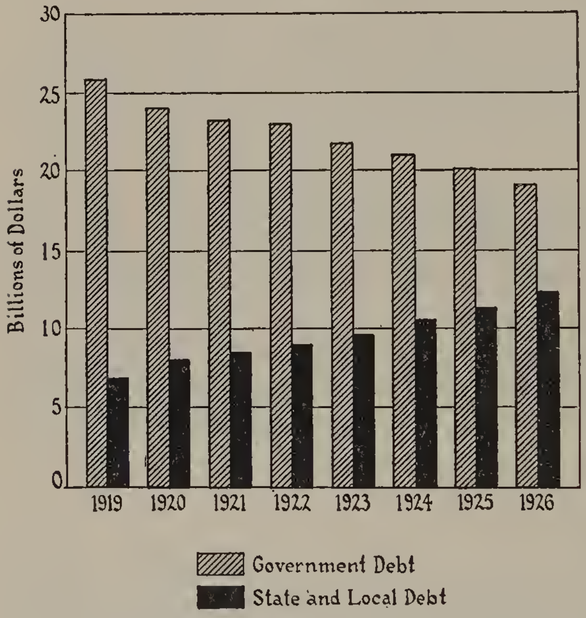
But we must still have school buildings, more of them. New and better roads must be built and devices provided to make motor movement mechanically safe. The large cities must expend larger and larger sums on tubes, tunnels, subways, and surface lines. Everywhere expenditures for sewage disposal and pure water supply are growing and are now taken for granted. The public health service must continue to expand.

---

[1] Reprinted by permission of the author from a pamphlet circulated by the Portland Cement Association.

Hospitals and clinics, police protection, fire protection, garbage collection and disposal, curbing, sidewalks, parks, playgrounds, swimming pools, libraries, art museums, auditoriums — all these extensions of the works of peace are increasing faster than growth of population.

Are the cities and states extravagant in going in debt for many of these extensions? Mr. Rightor believes they are not. One proof is that municipal bonds, sales of which during 1927 amounted to nearly a billion and a half dollars, have kept their price position next to government bonds, with a higher price than any other form of security.



The rapid decrease of the Federal debt compared on the above chart with a corresponding increase of state and local debts clearly shows the trend from war to peace-time pursuits. Federal spending is mainly for war, while state and municipal expenditures are for public service.

This would not be the case if the municipalities were really getting beyond their depth in debt. He quotes the Northern Trust Company of Chicago to the effect that the wealth of the people "has shown an increase proportionately much greater than municipal expenditures."

Of course, current taxation and departmental revenues cannot meet currently the expense of all this expansion in public service. But systems of city management are becoming more efficient and careful. In most cities bonds are made to mature within the life of the improvement for which they provide.

Most municipal bonds mature serially, beginning from one to three years after date of issue, and the debt is retired systematically. Moreover, issuance of local bonds in long-term city planning can be regulated to provide employment and stimulate business during short periods of business depression.

Economic gains outweigh costs

Of course, the process of piling up local indebtedness can be overdone. In New York State it is reported that some towns are in debt up to 40 per cent of the assessed value of taxable property. Undersecretary of the Treasury Mills has pointed out that the sum expended for interest and debt retirement throughout the country in 1925 was "about two-thirds of the value of the total bonds issued that year"; the billion and a third of bonds which they sold in 1925 "left them no very great margin over the amount they were obliged to pay for debts already incurred." Mr. Mills shows how the cost of financing ten million dollars' worth of public improvements annually by the issue of 25-year 4 per cent straight serial bonds would result, after the tenth year, in higher rather than lower taxes.

Even so, such issues might add sufficiently to the real income of a community during the period of payments to offset, and more, the interest charges that made the issues possible. Much waste and inefficiency exists in the conduct of our public business. All states and cities, as well as the Federal government, should set up adequate accounting and budget systems for the efficient control of the expenditures of government.

In general, municipal and state indebtedness are not unhealthy, notwithstanding the great increases and the fact that some local governments have unwisely contracted debts. In most cities and states, the public is getting needed goods and service more quickly by borrowing than they could by taxation alone. The economic gains from bettered educational facilities, highways, transportation, hospitals, and other public benefits, in the main justify the payment of interest and amortization of the large and growing state and local debts.

LXVI. STANDARDS OF CRITICISM

1. WHAT MAKES A SOCIAL SYSTEM GOOD OR BAD?[1]

By Bertrand and Dora Russell

Any man who desires, as I do, a fundamental change in the structure of society is forced sooner or later to ask himself the question: what is it that makes one social system seem to him good and another bad? This is undoubtedly very largely a matter of individual caprice. In history, for example, some prefer one epoch, some another. Some admire the polished and civilized ages, while others profess to admire the rude virtues of more barbarous times. One does not wish to think that one's political opinions result from mere fanciful preferences of this sort, yet I believe that an enormous proportion of political opinion comes, in the last analysis, from some untested, unexamined, almost unconscious love for a certain type of society actual or imagined. I think it is possible to arrive at something less subjective than such tastes and fancies, and I think the advocate of fundamental change, more obviously than anyone else, needs to find ways of judging a social system which do not embody merely his individual tastes.

Men's proximate political opinions are defended by arguments — arguments as to the effect of this course or that: such a course will lead to war; such another to economic slavery; such another to starvation. But in choosing the danger we most wish to avoid or the advantage we most wish to secure, we are almost all of us dominated by some more or less vague picture of the sort of society we should like to see existing. One man is not afraid of war because he has a picture of Homeric heroes whose fighting he finds it agreeable to contemplate. Another is not afraid of economic slavery because he thinks that he himself and his friends will be the slave-drivers rather than the slaves. Another is not afraid of starvation because he has a secret hoard and therefore believes that privation brings out the latent heroism in men. And so they differ as to the course which is best to be pursued, and the grounds of their differences remain obscure to themselves and others. Being obscure, they are suitable subjects for endless quarrels. The only way to make people's political judgments more conscious, more explicit, and therefore more scientific is to bring to the light of day the conception of an ideal society which underlies each man's opinion, and to discover, if we can, some method of comparing such ideals in respect of the universality, or otherwise, of their appeal.

---

[1] Reprinted by permission from *The prospects of industrial civilization,* The Century Company, 1923, pages 141–160.

I purpose first of all to examine some ways of judging a social system which are common but which I believe to be erroneous, and then to suggest the ways in which I think such judgments should be formed.

Among most people at most times, the commonest way of judging is simply by inherited prejudices. Any society which is not in a state of rapid transition has customs and beliefs which have been handed down from previous generations, which are unquestioned, and which it appears utterly monstrous to go against. Such are the customs connected with religion, the family, property, and so on. The peculiar merit of the Greeks was due largely to the fact that, being a commercial and seafaring people, they came across the customs and beliefs of innumerable and widely differing nations and were thus led to a skeptical examination of the basis of all such customs, including their own. If my memory serves me, there is somewhere in Herodotus a story of conversation between some Greeks and a barbarian tribe, in which the Greeks expressed horror of the barbarians for the practice of eating their dead; but the barbarians expressed quite equal horror of the practice of burying the dead, which to them was just as shocking as the other to the Greeks. Such experiences of intercourse with other nations diminish the hold which merely inherited beliefs have upon the man who lives in a fixed environment. In our age, this effect is produced not only by travel and commerce, but also by the changes in social custom inevitably produced by the growth of industrialism. Wherever industry is well developed and not very new, one finds that religion and the family, which are the twin props of every merely traditional social structure, lose their hold over men's minds. Consequently the force of tradition is less in the present age than it has ever been before. Nevertheless, it is even now as great, probably, as all other forces combined. Take, for example, the belief in the sacredness of private property — a belief bound up originally with the patriarchal family, the right which a man was supposed to have to the produce of his own labor, and the right which he was able to extort to what he had conquered by the sword. In spite of the antiquity and diminishing strength of these ancient grounds of belief in private property, and in spite of the fact that no new grounds are suggested, the enormous majority of mankind have a deep and unquestioning belief in its sacredness, due largely to the taboo effect of the words "Thou shalt not steal." It is clear that private property is an inheritance from the pre-industrial era when an individual man or family could make an individual product. In an industrial system a man never makes the whole of anything, but makes the thousandth part of a million things. Under these circumstances, it is totally absurd to say that a man has a right to the produce of his own labor. Consider a porter on a railway whose business it is to shunt freight cars: what proportion of the goods carried can be said to represent the produce of his labor? The question is wholly insoluble. Therefore it is impossible to secure social justice by saying that each man shall have what he himself produces. Early socialists in the days before Marx were apt to suggest this as a cure for the injustices of capitalism, but their suggestions were both utopian and retrograde, since they were incompatible with large-scale industry. It is therefore evident that the injustice of capitalism cannot be cured so long as the sacredness of private property is recognized. The Bolsheviks have seen this and have therefore confiscated all private capital for the use of the state. It is because they have challenged men's belief in the sacredness of private property that the outcry against them has been so great. Even among professing socialists there are many who feel a thrill of horror at the thought of turning rich men out of their mansions in order to make room for overcrowded proletarians. Such instinctive feelings are difficult to overcome by mere reason. The few men who do so, like the leading Bolsheviks, have to face the hostility of the world. But by the actual creation of a social order which does not respect merely traditional prejudices, more is done to destroy such prejudices in ordinary minds than can be done by a century of theoretical propaganda. I believe it will appear, when time enables men to see things in due proportion, that the chief service of the Bolsheviks lies in their practical challenge to the belief in private property, a belief existing by no means only among the rich, and forming at the present time an obstacle to fundamental progress — so great an obstacle that only its destruction will make a better world possible.

Another thing which affects people's instinctive judgment of a social system, whether actual or imagined, is whether it would provide a career for the sort of person they think they are. One cannot imagine that Napoleon, even in youth, could have been very enthusiastic about dreams of universal peace, or that captains of industry would be attracted by Samuel Butler's *Erewhon*, where all machines were illegal. Similarly, the artist will not enjoy the thought of a society where no man is allowed to paint unless his pictures are pleasing to the town council. And on this ground many artists are opponents of socialism. Men of science struggled against the system which existed in the seventeenth century and compelled them to teach nothing contradictory to revealed religion; and in like manner intellectuals in Russia object to have to teach their subjects from a Marxian point of view. People who find a pleasure in ordering others about (and this includes most of the energetic people in the world) will not like anarchism, where every man can do as he pleases. They will be in rebellion against existing authority unless they are part of it, but will wish to replace it by their own authority, not to abolish it, because in a world where every man could do as he pleases executive people would find no career. On the other hand, easy-going people will hate strenuous systems. They will oppose the setting up of drill and severe educational methods. During the war, they called such things "Prussianism." If they were better informed about Russia, they would now call them "Bolshevism." I confess to a temperamental sympathy with this point of view, and my sympathy was confirmed by what I saw of China, the most easy-going country left in the world. But this is not an easy-going age, nor one in which such temperamental preferences can be allowed to weigh. It is an age in which we have to think less of the present than of the future, less of the lives of our to generation than of the lives they are preparing for the generations own come.

Another thing which influences people, more or less unconsciously, in their judgment as to a suggested social system, is the question whether the activities involved in the creating of it would be agreeable to them. I fear that revolutionaries are not always exempt from this motive. There are certainly some in whom hatred of the possessing classes is stronger than love for the dispossessed; there are some to whom mere benevolent feeling appears to be repulsive humbug, and who derive the zeal of their revolutionary ardor mainly from the delight which they feel in the thought of punishing the bourgeoisie. Such men will, of course, always be found among the advocates of violent tactics, since without violence there is no satisfaction for their impulses. Patriotism and militarism have, in many men, a similar origin. The thought of fighting, or, more probably, the thought of setting others to fight, is delightful to them, and patriotism recommends itself to them as a creed likely to produce fighting. I do not mean that men are conscious of these impulsive sources of their beliefs, but I do mean that such impulses operate in the kind of way studied by psychoanalysis, and I believe that it is of great importance to drag the operation of these impulses into the light of day, to be aware of their operation in ourselves, and to do what we can to make others similarly aware; for an underground, unconscious force operates against reason, eludes discussion, and makes objectivity impossible while it remains undetected.

Among writers of sociology and political theorists generally, a very common way of judging the social structure is by whether it constitutes a pleasant pattern to contemplate. Many social theorists forget that a community is composed of individuals, and that whatever of good or bad it may contain must be embodied in those individuals. They think of the state as something having a good of its own, quite distinct from the good of the citizens; and what they call the good of the state is usually, unconsciously to themselves, what gives them a certain esthetic or moral satisfaction. We know that when God created the world he saw that it was good, obviously not from the point of view of the unfortunates who have to live in it, but from a higher point of view, presumably that of esthetic contemplation. In like manner, social theorists create worlds in their imagination which they also see to be good in spite of the fact that they would be intolerable to live in. Such worlds are neat and tidy;

everybody does at each moment something which is in accordance with the central plan; they obey the will of the administrator as the universe obeys the will of God. The theorist, of course, is always in imagination himself the administrator. This kind of social theory was made popular among professors by Hegel; it was used by him to laud the Prussian state, and has been used by his academic followers to support the conservatisms of their several countries. Since the war, the Hegelian theory has been at a discount, having been supposed in some mysterious way to have inspired the invasion of Belgium; but in other forms a similar outlook remains common. Much of the belief in industrialism, particularly as applied to backward countries, is of this sort; it is intolerable to the industrially minded to think of lazy populations sitting under banana trees, eating the fruit as it drops, and being happy in unproductive idleness. Some forms of socialism are not free from this defect: they aim rather at creating the kind of state which is pleasing to theoretical contemplation than the kind which will suit the temperaments of its citizens. A very great deal of imperialism is also of this sort; it is pleasant to see much of one's national color on the map, and it is unpleasant to see one's dominions jagged and scattered owing to the intrusion of foreign territories. The habit of judging the state as it is to contemplate, not as it is to live in, arises from giving more importance to the faint and transient sentiments of an observer (when that observer happens to be oneself) than to the vivid and continual experiences of those who have to live under the government of the state. It is certainly a very potent source of bad social theory. Whoever wishes to be a social theorist should daily remind himself of the very simple but important maxim that a state is something in which people have to live, and not merely something to be read about in books, or contemplated as we contemplate the view from a mountain top.

So far we have been concerned with ways of judging a society which we believe to be mistaken. It is time to turn to those to which we can assent.

There are two elements in a good society, namely: first, the present well-being of those who compose it, and secondly, its capacity for developing into something better. These two do not, by any means, always go together. Sometimes a society in which there is little present well-being may contain within itself the seeds of something better than any previous system. Sometimes, on the other hand, a society in which there is much diffused well-being may be unprogressive, for a time static, and ultimately decadent. It is, therefore, necessary to take account of both elements as independent ingredients of the sort of society we should wish to see existing. If the science of social dynamics were more developed and the art of prophecy less insecure, progressiveness would be a much more important quality in a society than present well-being. But politics is so far from scientific and the social future so very uncertain that present well-being, which is indubitable, must be allowed as much weight as an uncertain future good, although this future good, if realized, will outweigh anything merely present because of its longer extension in time. "A bird in hand is worth two in the bush"; and this is particularly true when we are not sure there are any birds in the bush at all. Let us therefore begin with what makes the present well-being of a community.

In judging of the present well-being of a community, there are two opposite fallacies to be avoided. We may call these, respectively, the fallacy of the aristocrat and the fallacy of the outside observer. We considered a moment ago the fallacy of the outside observer. The fallacy of the aristocrat consists in judging a society by the kind of life it affords to a privileged minority. The ancient empires of Egypt and Babylonia afforded a thoroughly agreeable existence for kings and priests and nobles, but the rest of the community were mostly slaves or serfs, and must have had an existence composed of unremitting toil and hardship. Modern capitalism affords a delightful existence for the captains of industry: for them there is adventure and free initiative, luxury and the admiration of contemporaries. But for the great mass of the workers, there is merely a certain place in the great machine. To that place they are confined by the need of a livelihood, and no effective choice is open to them except the collective stopping of the whole machine by strikes or revolutions, which involve imminent risk of starvation. Defenders of the capitalist régime are apt to vaunt the liberty which it grants to men of enterprise, but this is an example of the aristocratic fallacy. In new countries, such as the United States used to be, and such as South America still is, there may be some truth in it, and therefore in such countries one sees capitalism at its best; but in older countries, whose resources are developed and whose population is nearly as great as present methods of industry can support, the supposed freedom of enterprise exists only for a few. The early history of railways in the United States is full of bold piratical adventures; the railroad kings of that period remind one of Elizabethan buccaneers. But a railway in modern England is a very sober affair: its capital is held largely by innumerable maiden ladies and orphans whose funds are administered by trustees; its directors are sleepy Peers; its policy is traditional; and it does nothing to encourage new men with bold schemes. This is not due, as superficial observers suppose, to a difference between the British and American temperaments, but to a difference in their geography and industrial antiquity. But even taking the capitalist case at its best, even considering America as it was forty years ago, it was only the men of unusual enterprise and push and unscrupulousness who came to the top. Such men are, by definition, the minority, and a society which suits only them cannot be considered satisfactory except by one who commits the aristocratic fallacy. I am afraid there are many socialists who commit the same fallacy; they imagine industry developed under state control, and they visualize themselves in that future millennium as part of the state control, not as part of the ordinary workaday labor. In a system of centralized bureaucratic state socialism, those who direct the machine will have all the advantages at present enjoyed by the captains of industry, with the exception of enormous wealth, which to a vigorous, executive, and combative person is one of the smallest advantages of business success, being valued mainly as a tangible proof of ability and power and as a means of acquiring the respect of the herd. But it is not only the great captains of industry who will enjoy an exceptionally agreeable life under state socialism; it is also the whole army of officials. It is obvious that the man who sits in a government office, and spends his time interfering with the other people, has a pleasanter life than the man who works in a mine or stokes a liner. Yet there are many forms of socialism which would do nothing to remedy this inequality. The industrial machine as it has been developed by capitalism is full of injustices other than the inequality of wealth. Unless these other injustices are also remedied, a socialistic society may be scarcely pleasanter to the average manual worker than the existing system. This is concealed from labor politicians and from men with bureaucratic minds because they envisage themselves in the new order as leaders or officials, not as ordinary workers. Their judgment of the society they aim at creating is, in fact, vitiated by the aristocratic fallacy. It may be that the evils of the present world must be cured one by one, that inequality of wealth must be tackled first, leaving inequality of power for a later stage, and inequality in the pleasantness of labor for perhaps a still later stage. It may be that a bureaucratic centralized state socialism is the necessary first step. It is not this that I am denying. What I am denying is that such a society is good in itself, and I do not think that anyone who imagines with equal vividness the lives of all the members of the community can remain contented with an ideal which confines initiative, power, and the use of intelligence to a few.

A society which is to bring diffused well-being not only to one class or to one type of character, but as far as possible to every member of the community, must not be too systematic nor too orderly. It must not be the kind of society which a man of administrative temperament plans in his head and enforces by bayonets and the criminal law. Different individuals have different needs, and it is important to suit all needs that can be suited without damage to others. It is, of course, necessary to restrain predatory impulses. The insufficient amount of such restraint is one of the greatest evils of the world as it is. But it is at least equally disastrous to restrain creative impulses. This is the danger of what one may call "tight systems." A military machine or an industrial machine treats men as all alike, with the exception of the privileged few who direct it; it has no room for other exceptions, no desire for the kind of work that would not be ordered from above, no toleration for the kind of person to whom it is difficult to become a mere cog in the machinery.

Perhaps the most important of all the qualities that a social system can possess is that it must be such as people can *believe* in. Europe during the last five centuries has advanced with quite extraordinary rapidity in all that makes what we call civilization, but step by step with this advance has gone a progressive disintegration of belief. I do not mean merely belief in religious dogma, though this also has played its part. I mean belief in all the assumptions on which the social order is based; all the sources of authority have become suspect, and all inherited institutions have ceased to command assent. The war and the Russian revolution gave the *coup de grâce* to such beliefs as remained. At the beginning of the war, democracy was still a fighting creed, something for which men were willing to die. At the end, poor President Wilson was left its one remaining votary, proclaiming his gospel in pathetic isolation to a world which shrugged its shoulders and went about its business as if he had not spoken. It may be that some element of injustice is essential to the existence of a social order, at any rate for many ages to come. But in ages of faith men believe in the social order even when it makes them suffer, even when they are victims of what to a later age appears unmerited misfortune. Nowadays this is not the case. The only men nowadays who believe in injustice are those who profit by it, and even they in their hearts feel that their belief is not genuine but merely an embodiment of self-interest. I except from this indictment the big capitalists of America, who are more naïve, more untouched by modern thought, than any other set of men with the exception possibly of a few Central African negroes. American business men still believe in the capitalist system, but business men elsewhere merely hope it will last their lifetime, provided they can obtain sufficient machine-guns and ships to shoot down or starve those who advocate systems which, in their hearts, they know to be better. Such half-hearted belief does not bring happiness. The capitalists tried to persuade themselves that their war against Russia was a holy crusade, but in this attempt they were very unsuccessful throughout Europe. And everybody except the capitalists is unable to create in himself even a semblance of belief in the old order, the order which made the war and blockaded Russia, the order which devastated Ireland, starved Germany and Austria, imprisons or kills socialists, and, amid the tottering ruins of our old civilization, pursues the old absurd diplomatic game of haggling for territories and arming against nominally friendly nations. This old order is no longer capable of bringing happiness. It is not only its nominal victims who suffer; it is not only the defeated nations or the proletarians who find that life has lost its meaning. Even the well-to-do classes of western Europe have no longer the sense of anything to live for. Having no purpose in life, they have plunged into a frantic pursuit of pleasure. But with every added pleasure comes added unhappiness; while the senses are gratified, the soul remains hungry — there is no inward sense of well-being, but only futility and despair.

There is only one cure for this despair, and that is a faith that a man can believe. No man can be happy unless he feels his life in some way important; so long as his life remains a futile round of pleasures or pains leading to no end, realizing no purpose that he can believe to be of value, so long it is impossible to escape despair. In most men at the present time this despair is dumb and unconscious, and, because it is unconscious, it cannot be avoided. It is like a specter always looking over a man's shoulder and whispering acid words into his ear, but never seen, never looked at face to face. Once acknowledged, once faced, this despair can be coped with, but it can be coped with only by a new belief, by something which supersedes the search for pleasure. Although it may sound old-fashioned to say so, I do not believe that a tolerable existence is possible for an individual or a society without some sense of duty.

There is only one kind of duty that the modern man can acknowledge without superstition, and that is a duty to the community. There was a time when such ideals as God, country, family, could move men. That time is past. All such ideals were used by elderly rulers throughout the war to drive the young to slaughter each other in futile carnage. Most of the young at the time believed that the war was about something important, but, now that it is nominally over, they see their mistake. Nothing good has come out of it except revolt against the system which caused it; the vices of the vanquished have been acquired by the victors, and the only new hope has come from Russia, the most defeated of all the nations in the Great War. Socialism is, I believe, the only faith which can restore happiness to the world, which can cure it of the sickness left by the war, which can give men the sense that their lives are capable of something better than pleasure and can end the despair that drives men to frivolous cruelty. The faith of the Russian communists in the new thing they are endeavoring to create is rather crude, rather ruthless, possibly rather premature, but it makes their lives happy as hardly any western life is happy; it enables them to endure privations and dangers, and preserves throughout a kind of joy and freshness in the soul such as one does not find in the weary West. If there were no other argument for socialism, the fact that it is a creative faith which the modern man can believe would be alone enough to make it the hope of the world.

And this brings me to the second of the two characteristics which a good society must have. It must be progressive; it must lead on to something still better. Now fundamental progress seldom comes from those who fit comfortably and easily into the existing system. It is not, for example, from trust magnates that we expect the inauguration of the new era. In like manner, if we imagine socialism established, it will not be from those who administer it or from those who have least difficulty in adapting themselves to it that new growth will come. New growth will come from the creative people, the men of science, the artists, the thinkers, many of whom very probably will be critics of the new order. Under the influence of commercialism, many men have come to think that the important progress is progress in the technical methods of production, better machinery, better means of communication, and so on. This has been true, since in the past labor was not sufficiently productive to provide a good life for all. But it is true no longer, and with our existing technical knowledge, if we had a scientific socialist organization, every man could have enough without long hours of work. When once men have enough of material commodities, there is no great importance in providing them with a superfluity. It is only commercialism, the competitive struggle for markets, as reinforced by the luxury of the very rich, that has made mere quantity of goods seem so important. We have reached the point where we could organize our material resources in a way that would leave sufficiency and leisure for all. Therefore the important progress now is not in industrial production but in ideas. One might hope that under socialism the energy liberated from the production of luxuries and armaments would be employed in the pursuit of knowledge and in the beautifying of life, bringing back for the many that artistic excellence which existed in the pre-industrial era for the few. But if this is to happen, there must be freedom for the creative people, the men of science and the artists. They must not be controlled at every point by state officials, or obliged to do work at every moment which is pleasing to existing prejudices. Without freedom, the man who is ahead of his age is rendered impotent. All innovations are, to begin with, displeasing to the majority, yet without innovations no society can progress. Freedom for exceptional people, provided their work is creative and not predatory, is the most important condition of progress in any society. There is always a tendency for the administrator to think of himself as God Almighty and to imagine himself capable of judging the good or bad in every new idea. This tendency is dangerous, and would be particularly dangerous in the earlier phases of socialism, where the administrator may be expected to have more power than he has ever had before. The danger can only be met by acknowledging the importance of creative work and the fact that the best creative work often does not commend itself to contemporaries. It is not in the least necessary that the artists and men of science should be rewarded for their work, since the best of them are indifferent to rewards and do their work merely because they love it. But it is necessary that they should be free to do it and free to make it known — that, for example, a man of science should be able to print his work without having first to find favor in the eyes of officials. All this will come about of itself if socialism comes as a liberation for the many, not as a punishment for the few, if it is love for the good we are creating that inspires us, and not merely hatred for the evil we are destroying. It would be demanding the impossible to suggest that hatred should be wholly absent as a generator of energy in the time of transition, but it is important that it should not be the fundamental motive. If hatred is the fundamental motive, the régime created will be oppressive and restrictive, not only where it must be, but also in many directions where oppression and restriction must be avoided if progress is not to cease. It is a world full of hope and joy that we must seek to create, not a world mainly designed to restrain men's evil impulses. Evil impulses must be restrained, especially during the time of transition while they are still strong, but this is an incidental part of our task, not its main purpose or inspiration. The main purpose and inspiration of any reconstruction which is to make a better world must be the liberation of creative impulses, so that men may see that out of them a happier life can be built than out of the present frantic struggle to seize and hold what others desire. Socialism, once established, may so regulate the material side of existence as to enable men to take it for granted and to leave their minds free to employ their leisure in those things which make the true glory of man.

2. A CRITIQUE OF AMERICAN CIVILIZATION[1]

By John Dewey
Professor of Philosophy, Columbia University

It has long been a moot question how civilization is to be measured. What is the gauge of its status and degree of advance? Shall it be judged by its élite, by its artistic and scientific products, by the depth and fervor of its religious devotion? Or by the level of the masses, by the amount of ease and security attained by the common man? Was pre-revolutionary Russia at the acme of European civilization because of its achievements in literature, music, and drama? Or will the new Russia, if it succeeds, even at the expense of retrogression in these matters, in elevating the life of the masses, stand at a higher level? As between the two sides to the controversy, there is no common premise, and hence no possibility of a solution. One side can claim to stand for ideal attainments as the ultimate measure and accuse the other side of having a low and merely materialistic criterion. This other side can retort with a charge of aristocratic harsh indifference to the well-being and security of the great number to whom the struggle for life is all-important, and inquire what is the value of an art and a science from which most are excluded, or of a religion that for the many is merely a dream of a remote bliss compensatory to the suffering of present evils.

The question is evidently crucial for an appraisal of gains in American civilization. From what base line shall we set out to measure? Those who engage in glorification of American life uniformly point to the fact that the lot of the common man (however poor it may still be from an absolute standard) is at least better than that of his fellow in other countries or at other epochs.

If we ask for the intellectual and ideal content of this common life, the tale is not so reassuring. Even when we have discounted the exaggerations of the now familiar denunciations of the yokelry and the booboisie, enough truth remains to be depressing. It would probably be easy to fill my alloted space with evidences of the triviality and superficialty of life as it is lived by the masses. It is perhaps enough to refer for a good-humored depiction of the scene to Charles Merz's *American bandwagon.* And if we take achievements in higher culture as our standard of valuation, not even the most optimistic can give our civilization a very high rating. To take one illustration, our physical plant for scientific study is far superior to that of any European country; measured by capital invested, it might even be equal to that of all Europe. The results hardly correspond. The pressure toward immediate commercial application is great, and the popular hero is the inventor, not the investigator and discoverer. Burbank and Edison are names to conjure with, while those of Willard Gibbs and Michelson are faint rumors on a thin air.

---

[1] From *Recent gains in American civilization*, edited by Kirby Page, copyright 1928 by Harcourt, Brace and Company, Inc., pages 264–266, 272–273.

The dispute concerns ultimate standards, and hence, as has been said, cannot be settled — except by taking sides. But one can say that in the end the value of elevation of the common man in security, ease, and comfort of living is to be viewed as an opportunity for a possible participation in more ideal values; and that there is something defective, to say the least, in a civilization wherein achievements in the former do not terminate in a general participation in spiritual values. To bring about opportunities is to have done much; but if the opportunities are not utilized, the actual outcome is a reproach and condemnation. Here, then, is the issue: Admitting that our civilization displays a relative superiority in its material basis, what are we likely to build upon it in religion, science, and art, and in the amenities and graces of life?

It is a trite saying that our social experiment, that of raising the level of the mass, is an unprecedented one. It is impossible, however, to separate the scope of the endeavor from that side of our civilization that is most open to criticism — its devotion to quantity at the expense of quality. It is as true of civilizations as of persons that their defects and their qualities of value go together. Moreover, the ideal of mass elevation is intimately connected with the fact of diffusion. Our democratic fathers apparently thought that the desired elevation of the mass would automatically occur if certain political agencies were instituted. By one of the ironies of history, these political agencies are just the things that lent themselves, indirectly rather than directly, to appropriation and manipulation by the few in possession of ultimate economic power. But meantime the very forces of industry have created mechanisms that operate to bring about diffusion on an unprecedented scale. European critics of our culture often ignore the fact that many of the things they criticize are due to the fact that we have been compelled perforce to undertake the task which Europe shirked. In their animadversions upon our lack in higher culture, they pass over the fact that millions of European immigrants have, and have realized, opportunities here that they never had at home. The mass and quantitative aspect of our civilization has thus a uniquely positive significance. All the facts indicate that if we should attain the higher values by which civilization is to be ultimately measured, it will be by a mass achievement, and not be the work of a chosen few, of an élite. It will be by social osmosis, by diffusion.

3. THE GOOD AND EVIL OF THE NEW INDUSTRIALISM [1]

By Stuart Chase

Author of The tragedy of waste *and* Men and machines

The machine age has poured a cornucopia of new commodities into our laps; has it made us any happier? Something not far short of a billion mechanical horses are loose in America today; have they added to the leisure, the culture, the well-being of America, as a civilized community? Civilizations have been reared on agriculture, trade, slavery, sea power, bars of gold, administrative efficiency, loot, conquest. Some of them have reached very noble levels before passing into oblivion. Our civilization stands upon the backs of a billion horses, and while many people have opinions — sometimes violent opinions — nobody knows very clearly whether we have achieved something that is either noble or destined to endure. As Henry Ford rises to proclaim utopia,

---

[1] Reprinted by special permission from the *Current History Magazine*, July, 1929, a monthly periodical published by the New York Times Company.

Oswald Spengler, after stupendous cogitation, writes off Western Civilization as a bad debt. As Charles A. Beard regards a brilliant morning, Austin Freeman fails to note anything save the blackest night.

Indeed there is much to be said on both sides. Watching a tractor save the labor of fifty men; a steam shovel dispensing with picks and shovels and aching backs; a pulmotor bringing a dead man back to life; a silver airplane against a blue sky — one can only rejoice in the utility and the beauty which the machine has brought. But when one realizes that a fleet of not over five hundred of those silvery beauties, each with a bomb suspended beneath it, is readily capable of utterly destroying a civilization, such as that of England, in something like two hours' time; when one views the dour and besotted ugliness of the Pittsburgh industrial district; when one reads of little girls scalped by machinery while working on the night shift in Chinese cotton mills — the hymn of thanksgiving somehow sticks in one's throat.

To assess the gains and losses of our age and attempt to strike the balance, debit or credit, is a task for a congress of the best living minds, fortified by many tall portfolios of facts, together with certain basic data — such as reliable unemployment figures; the trend of mental diseases; the capacity of the human organism to stand repetitive work — which, alas, have never been collected. Only the most reckless of statistical Don Quixotes may rush into the vacuum left in the absence of such a congress. With all due apologies, I hereby rush, without even a Sancho Panza to befriend me. I rush because I am heartily sick of the broadsides of wholesale praise and wholesale blame which have been discharged at mechanical civilization, broadsides which are too often narrow, opinionated, undocumented, and irresponsible. I want to know, item by item, the things which the machine has done to us, and how far they seem to be good or evil things. With these facts in hand, it may be possible to cast a preliminary balance sheet before the congress meets.

Effects manifestly good

So far as I can ascertain — and I have been working intensively on the problem for many months — the Power Age has brought the following benefits to mankind:

1. The life span of modern peoples has grown longer. The average expectancy of life in America has increased a third in the past two generations because of medical and mechanical controls. We are healthier in all probability than ever before in the history of the race.
2. Higher living standards, in terms of distributed commodities if not of happiness, have been achieved for a larger fraction of the population than have ever before obtained.
3. The shrinkage of space brought about by mechanical devices — railroads, steamships, motor cars, telegraphs, cables, telephones, radios, airplanes — is demonstrating more forcibly every day the essential social and economic unity of the world. While the logic is inevitable, the acceptance thereof is still reasonably remote.
4. Hours of labor are declining.
5. Superstition is declining. The average citizen is somewhat readier to ask, "What makes this thing act the way it does?" rather than fall on his face before unknowable mysteries.
6. Certain machines, particularly the automobile, have tended to promote self-confidence and a sense of power in persons and classes who might otherwise go timidly to their graves.
7. The mechanical operation of industry is beginning to introduce a system of tests to determine how long a given individual can work without fatigue poisons damaging his output. No other culture ever dreamed of such controls. The process is still in its infancy and further advanced in Europe than in the United States.
8. The machine has broken down class distinctions founded on land ownership and patents of nobility.
9. Even as pure science brought forth applied science, the necessities of industry have stimulated a great variety of researches into the fundamentals of physics and chemistry, thus expanding the limits of human knowledge.
10. Cruelty as a social phenomenon has undoubtedly decreased, while the radius of social sympathy has increased. Who used to weep for famine sufferers in China? Now the cable and the camera bid us weep in short order, a handkerchief in one hand and a checkbook in the other. A citizen of Rome, one suspects, would have regarded the Red Cross as so much moonshine.

The above effects, of course, are not due solely to machinery, but they have made themselves felt concurrently with a tremendous growth in mechanical power, and are linked with it to a greater or lesser degree.

A list of evils

We now turn to manifest evils:

1. The menace of mechanized warfare grows daily more ominous.

2. The tenuousness of connection and balance in the interlocked industrial structure also grows. Any crisis — such as a strike of key technicians, a struggle between rival groups, a failure in a strategic material — seriously, perhaps horribly, upset the whole social equilibrium. Technical achievement and public ignorance of its implications are tending to move with equal velocity in opposite directions.

3. Natural resources are being exploited at a rate as alarming as it is wasteful.

4. Monotony and wearisome repetition in mechanical work, while apparently not on the increase at the present time, has worked frightful havoc with millions of human beings temperamentally ill-adjusted to the process.

5. Specialized tasks are sundering the ancient trinity of work, play, and art, and thus tending to upset an admirable, and perhaps biologically necessary, human equation.

6. Machines, like the radio, the phonograph, the moving picture, have forced recreation in the direction of second-hand watching and listening rather than toward the more rewarding forms of active participation.

7. Specialization has enormously promoted the importance of money. This leads to a serious confusion of values, in that the symbol displaces the underlying reality in the average mind.

8. Workmen are displaced by machines faster than they can be absorbed in other occupations, involving a period of greater or lesser unemployment with all its attendant suffering. Many students believe that the process is now so rapid that no new jobs can be found for many of the displaced men, and that unemployment is to assume an uglier aspect than at any time since the industrial revolution began.

9. Modern industry requires more vitality in its workers than was the

case in the past, with the result that they are being scrapped at an earlier age, with attendant difficulties in meeting the problem of economic survival in their declining years.

10. The existence of more machines than purchasing power to absorb their output has led to the foolish and expensive antics of high-pressure salesmanship, in the course of which the consumer becomes increasingly helpless and confused as, for instance, the tobacco interests warn him against candy and the candy interests against tobacco. This phenomenon has been well termed "the new illiteracy."

11. The increased speed and use of the mechanical process has made for a greater accident rate in the United States since 1920.

12. At the present time industry is clearly overvalued at the expense of agriculture.

13. Mechanization has led to cities so congested that it gives little pleasure for most of us to live in them, or to contemplate what will happen if the pressure becomes much greater.

14. Noise, dust, and smoke levy a terrific toll on modern peoples, a toll unknown before Watt.

Intermingled good and evil

Finally, we have a list of effects in which the good and evil are so intermixed that I, for one, cannot be sure where the balance lies:

1. Population has increased and migrated on an unprecedented scale during the course of the industrial revolution. The total number of people in the world has more than doubled in the last century, while the drift to the cities becomes ever more pronounced.

2. The machine has brought community self-sufficiency to an end. The village able to feed, shelter, and clothe itself is nonexistent in America. This makes for greater productive efficiency when everything is going well and for greater social disaster when everything is going ill.

3. Machines uproot old skills, but create many new ones — those of the chauffeur, air pilot, "steel bird," machinist, locomotive engineer — a long, long list. Are the new skills as rewarding as the old?

4. The machine has deprived the housewife of her skills and substituted bridge, shopping, and culture clubs — a manifest loss. It has at the

same time launched the whole phenomenon of economic independence and equality for woman — in my opinion, a manifest gain.

5. The Power Age has broken up the mores of the family, marriage, sex, and religion, to a marked degree. This is a painful process, but perhaps invigorating in the end.

6. The machine has ruthlessly destroyed a whole age of art, but is busy creating a new age, which in architecture, engineering, and design has already achieved great distinction.

7. The machine has debased the quality of many goods, but improved the quality of others. Much fine workmanship — say, that which goes into an ocean liner — is impossible without machinery.

8. We tend to draw on knowledge increasingly from written documents and decreasingly from first-hand experience, as did the guild apprentice. This divorces us from reality but gives us wider scope.

9. Life moves faster than ever it did; there is more to experience and rather less emotional ability with which to experience it.

10. When the workman left his cottage for the factory, he lost his economic independence. He gave up his own tools and operated tools owned by somebody else. So long as the force which owns the factory has no interest in labor, save as a commodity, the workman is distinctly worse off. If, however, the force — as is now the case in Russia and among certain employers elsewhere — regards the workman as a human being for whose benefit the wheels of industry are principally turning, he may well stand to gain far more than he has lost. Goods can be produced with less labor by the machine, and in no other way can his standard of living be markedly increased.

With these specific results before us, can we hope to pass judgment on the net impact of machinery on civilization in the hundred and fifty years that have passed since James Watt stopped in his walk on Glasgow Green one Sunday afternoon and smiled, because the solution of the problem of the vacuum in a steam engine had come to him? The reader will have to strike his own balance, but as I study the schedules it seems to me that to date the machine has brought more woe than it has happiness, and that the cause of civilization in its noblest sense has not been materially advanced.

When one looks at the ravages of the World War, the desolating ugliness of most industrial districts, the monotonous dreariness of much factory work, the vast train of misery which flows from technological unemployment, the unrewarding nature of mechanized recreation, the chaos into which our religious and ethical standards have been cast by the pressure of modern industry — these things overbalance, for the day-by-day life of the average human being, the gains of a greater flood of commodities, a somewhat lopsided prosperity, a lifting of back-breaking toil in certain areas, a decline in illiteracy and a truly splendid advance in science and applied technology. The margin may not be wide, but I believe it can only be recorded in red figures. If by some divine fiat the America of 1929 were made static for a century, with no prospect of change, I, for one, would be glad to go back to the Newburyport of my great-great-grandfather, living out my life without benefit of power engines. Most thoughtful persons would prefer any of a dozen former civilizations to the modern world were it to be frozen in its existing form.

The upward trend

This choice is a purely academic one, however. There is not the slightest possibility of our age remaining static. Technology is in a fury of change, and civilization, willy-nilly, must change with it. The real question, as against the academic one, is whether the forces we now see at work are destined to make for a higher or a lower form of civilization. Again, as I study the schedules, I believe that the direction is up rather than down. If certain outstanding dangers can be mitigated, there is good reason to hope that in another generation — perhaps in another decade — the gains will outdistance the losses, and the balance swing from red to black. As in some diseases, it seems to be a case of getting worse before getting better. The introduction of machinery into a given culture, whether it be English, American, German, or Japanese, is the cause for a violent internal pain and a great deal of human suffering. But we have already had years enough behind us to see that the condition is not necessarily permanent; that it is possible to live in some sort of domestic accord with the billion horses; that, as the decades march, the adjustment improves. The curve has not yet reached the level of certain former civilizations, measured in terms of leisure, culture, and happiness, but it is going up.

I believe that it will continue to go up until we cross all earlier lines and stand surrounded by the noblest civilization which the world has ever seen — *provided the menaces can be controlled.* Failing that control, we may go down in an equally spectacular collapse.

The outstanding menace is, of course, that of mechanized warfare. When machines are already available in a hundred airports to abolish England or France or the eastern seaboard of the United States in a few hours' time, it borders on futility to talk of upward curves and shining futures. If a few stupid politicians can, on nearly any bright morning, give the word to a handful of hot-headed boys to blow the world to bits, progress and the hope of progress become the watering of a rose garden on the brink of a volcano. If mechanized warfare is not abolished before the next major outbreak of hostilities, mechanical civilization becomes the most colossal liability *Homo sapiens* ever blundered into.

Secondly, intelligent control must be exercised in coördinating the proliferating specialization of the modern world. Cities are becoming too large, too congested, exhibiting too many exposed nerves. Industry is being overweighted at the expense of agriculture, ultimately threatening the basis of food supply. Men and women are being educated to perform — often very skillfully — one tiny part of one process in one department of one industry, and losing all sense of contact with the process as a whole. Ways and means must be found to avoid excessive departmentalizing. The billion horses must be guided or they will some day run amuck.

Thirdly, the machine presents a very serious threat to the earth's store of natural resources. These must be guarded and husbanded up to such time as the technology of substitutes is thoroughly worked out. Otherwise, with oil, or copper, or by-product coal gone, and no substitute available, we shall face a very nasty crisis indeed. It may well be that precisely such a crisis will come in respect to petroleum in the next decade, entailing a staggering human cost.

Finally, we have to reckon, and that immediately, with the growing threat of unemployment. Machines are now displacing men at a fantastic rate. No sooner have the "talkies" undermined the jobs of ten thousand theater musicians than the teletypesetter threatens the livelihood of thousands of printers. Unless some real constructive action is taken, we are liable to be faced, for the first time in the history of the industrial revolution, with a park bench which grows longer and longer. The total firing rate, it is believed, is beginning to exceed the total hiring rate, and, saddest of all, it is the older men who are destined to suffer the most. Owen D. Young has called unemployment the greatest blot on the going economic system, and further says that while the world does not owe a man a living, business owes a man an opportunity to earn a living.

Business and the state could go far toward ending unemployment if they took Mr. Young's philosophy seriously. What is called for is industrial planning on a continental scale. Halfway measures will do little good. We need initially reliable statistics on unemployment, then a great programme of public works, a gradual reduction of working hours (the New York building trades have just won the five-day week, thus joining the two hundred thousand workers in the country who have already secured it), and lastly a sound programme of unemployment insurance for the inevitable margin which will still remain.

If these four menaces — war, overspecialization, failure of natural resources, and unemployment — can be held in check, it may well be that we shall find no limit to the greatness of the civilization before us. The penalty of power is the creation of sufficient intelligence to direct it. Most of us are still too busy in our own little back yards to realize the awful magnitude of that challenge.

LXVII. RELIGION

1. THE FORCES THAT ARE DESTROYING TRADITIONAL BELIEFS[1]

By John Herman Randall, Jr.
Professor of Philosophy, Columbia University

Today even the average man is aware that he is living in a period of exceptionally rapid social change. He is quite prepared to believe that the daily round of living, with its familiar tools and pleasures, has been far more radically transformed in the generation since Abraham Lincoln than in all the dozens of centuries that separated Lincoln from Cheops, builder of the Great Pyramid of Egypt. He calls this progress, and accepts it as a matter of course, with hardly a regret for the familiar ways that are gone. He knows, too, that social customs and standards are rapidly shifting. Women have found a new status; the family is no longer the stable thing it once was; divorce is respectable and frequent; most of the old conventions between the sexes have gone by the board. The old ideals of thrift, honesty, and austere toil are often honored in the breach; men are far more interested in enjoying comforts and luxuries, in having a good time, in getting a kick out of living. People do not go to church as they used to; when they do, it is not to worship as their fathers worshiped, nor to believe as they believed. The average man perceives such changes, but he does not call them progress. When he is not belaboring the younger generation for their irresponsible pursuit of pleasure, he is frankly bewildered. Who or what is to blame?

Ten years ago the war was a useful scapegoat. The war has receded, but the disintegration of social standards goes on. The more thoughtful have come to feel some relation between our material and scientific "progress" and our moral and religious "decline." Today we blame the machine and science, with the factory system, the industrial cities, the mechanization and standardization of life they have obviously brought. Sincerely religious men are apt to emphasize how science has undermined the faith and moral standards of the young, while in intellectual and literary circles it is rather the fashion to regard the machine age as the real devil, robbing men of liberty and self-expression and beauty and the good life. The very scientific advance and multiplication of material goods that were for our fathers the grounds of unbounded faith in the future are to their sons objects of deep suspicion and distrust. They have already created a new world for us to live in, a world that foreshadows a still more alien future pressing in upon us; and we are by no means sure whether we really want to live in that new world or whether we could live in it if we would.

---

[1] Reprinted by special permission from the *Current History Magazine*, June, 1929, a monthly periodical published by the New York Times Company.

Indeed, to the sober historian thoughtfully observing our changing society, it is already clear that men are confronting a major cultural readjustment, a remolding of their beliefs and ways of life far more drastic than any faced since their remote ancestors abandoned a nomadic, hunting existence and settled down to the stability of agriculture. With few to mark them till the present generation, there have been emerging the material conditions and the accompanying scientific lore of a wholly new civilization. Men's ideas and social institutions have not kept pace; their conscious thought is still lingering in the pre-scientific, pre-industrial age. The breaking point has at last been reached. After years of unheeded growth, science and our machine environment are now insistently demanding that we adjust the rest of our life to them.

Our bodies live in a world where machines are triumphant and where science is their servant. But men do not yet feel emotionally at home in the bare halls of the factory or the laboratory. They are still attached by a thousand ties of loyalty to the thoughts and aspirations that moved their forebears in the long past. They inhabit the new civilization, but they are not yet really living its life. Their machinery is modern, but their institutions are medieval.

Our inherited civilization

How long can the civilization we have inherited from the peasant and the villager endure? How long can it withstand the steady onslaught of the machine and science? There is no sign that they will turn aside from their triumphant march. They have already started the age-old civilizations of the Orient to totter and crumble; what can resist them in their native West? The civilization in which they have taken root like some rank weed, the civilization in which we are still trying to lead our lives, was rooted in the countryside; it was built by men who toiled in the fields and felt the wind and rain and looked up to the hills and the stars. For most of us the countryside is already gone; we see only city streets and feel the hot breath of the machine and look up at glaring electric signs. That civilization culminated in a religious attitude which, in Christianity, expressed the natural feelings and thoughts of generations who lived the life of simple farmers, dependent on the wayward forces of nature. Our aspirations are to enjoy movies and radios and tabloids and motor cars, and we are dependent on a vast economic organization that stretches its tentacles around the world. The problems of the peasant or villager are not our problems; his ways are not our ways; his thoughts cannot be our thoughts nor his feelings our feelings. How long, then, can the great traditions that come down to us from the past, our heritage of religion and moral ideals, of economic and political and artistic thought and action, continue to survive in a world where the machine has created for us a new environment and science a new universe? In a civilization thus divided against itself, it is little wonder there is no inherited loyalty that does not feel the passions of civil war.

We stand today torn between two worlds. Our bodies labor in the city factory or office; our hearts are still in the dear old life of the village community. Our heads, alas, are troubled with doubts and bewilderment. That we are on the threshold of a civilization so different from the old that nothing to which we have grown attached will remain untouched, is beyond question. Will anything of the old Christian, agricultural world be left? Will we still have a religion or an art? Will any of our old ideals prove adequate to the new world?

We already feel that no society without a flourishing industrial system and an appreciation for science can call itself truly civilized. It will not be long before the whole world looks back from its achieved "civilization" to the essentially "primitive" life of the Greeks, the Romans, the Hindus, the nineteenth-century Europeans and Americans, and the

Chinese. Into that new civilization will be woven strains from all these earlier cultures, just as our old Christian culture contained survivals from the more primitive folkways of the ancient Hebrews and the barbarian Germanic groups. Yet it will not be surprising if men then put on the same level the Norse or Congo mythologies and Christian theology, and talk of the quaint ways of the country dwellers of the twelfth and the nineteenth centuries.

It is easy to remain blind to the cultural changes in which we are living, and to see no relation between our new scientific and industrial atmosphere and the disintegration of moral and religious ideas to which we may still be deeply attached. It is just as easy to see a dramatic conflict between two civilizations, and to resolve to battle for that which awakens our instinctive loyalties. The conflict is dramatic enough, in all conscience. It is not so easy to realize the inevitability and the sweeping nature of the changes ushered in by science and the machine, and still to see in them neither the dissolution of all that makes civilization worth while, nor yet the automatic guarantees of a more satisfactory world. What is necessary, if men are to face intelligently the new conditions of human living, is a knowledge of how cultures give way to other cultures, how civilizations grow into other forms of life. Men need to face the transformation of their own civilization in the light of the knowledge anthropologists and sociologists possess of the general course of any cultural change; they need to know the specific ways in which such change has taken place in the past of their own culture, not to destroy it, but to remold it into the form they have inherited.

Limits of reconstruction

With such a background of social science and historical information, men are freed from both despair and unthinking enthusiasm, to undertake present problems of adaptation with a critical appreciation of the limits within which reconstruction can take place. They can then appraise with some objectivity the changes actually occurring; they can discern the values of the older civilization which are too precious to abandon, and the novel values that can be realized only by means of science and the machine. They will then see the present as a cultural change of greater magnitude, perhaps, than any in the past, but no different in general character from readaptations that have again and again been successfully accomplished by their predecessors. They will find in the revolutionary effects of scientific industrialism not a tragedy but an opportunity, a challenge to thoughtful and intelligent and sensitive manipulation and control.

To the historian of civilization such challenges and such reconstructions are an old story. Our own past has for a thousand years faced one novel system of beliefs after another and successfully incorporated them in its intellectual life. Every century has found the material and technological conditions of its experience fundamentally altered and has had to achieve a satisfactory adjustment of its moral standards and its social organization to the changed setting of its life. Hardly a generation has gone by that did not feel its faith disintegrating under the impact of new ideas. There has never been a time when the conservatives did not view with alarm the abandonment of essential verities and the assimilation of alien ways of life and thought. There has never been a time when earnest leaders were not seeking to incorporate new beliefs and values into a tradition they felt to be out of touch with modern thought. In the light of this perspective lent by history, we need not feel we are facing a wholly novel set of problems; we need not imagine our only hope lies in arresting the dissolution of the older culture. Our task is rather to effect one more readjustment, one more reconstruction of inherited beliefs and standards, in the atmosphere of science and the machine age. Such a perspective is enough to destroy the current fear of the future; it creates courage to face the difficult problems of reconstruction once more.

Even the specific novel elements that must be worked into our civilization are by no means entirely unfamiliar. The spirit of business enterprise has been in the Western World since the close of the Middle Ages; it has been responsible for the major cultural revolutions in our past, the Renaissance, the Reformation, the Age of Reason, the political and economic revolutions of the end of the eighteenth century. Even its application to industry, with its consequences in the factory system, large-scale capitalism, and the huddling of men into cities, has existed for over a hundred and fifty years. Natural science has been with us since the seventeenth century; it has already engineered two major intellectual revolutions, that of the Age of Enlightenment and that of the late nineteenth century. We are thus in a position to observe how these outstanding dynamic forces have already in their infancy transformed our culture. In each case there have been the same familiar groups: the conservatives who would not traffic with the new force, the radicals who found it the one thing needful, and the conciliators and mediators who resolved to cling to the values of old and new alike. In each case these mediators succeeded in creating a new synthesis, retaining the core of the older tradition, embracing the new element, and building a novel set of institutions and ideas to include them both. In no case have the old ways and beliefs remained unchanged; in no case have the new entirely replaced them. There has always been a reconstruction, a readaptation.

Yet in spite of this long familiarity, it is true that our civilization did not begin to feel the full impact of mass production, of the factory system, of a mature capitalistic economic organization, of a really mechanized and urbanized life, until the present generation. Most of those now alive grew up in the simpler society in which the characteristic institutions of the older western civilization originated. Their habits of thought and their ways of life were formed in a world still largely rural, at most commercialized. They can never be true citizens of the machine age. Nor has the science that was first popularized in the great controversies associated with Darwin and nineteenth-century physics yet come to mold the thought of more than a tiny minority of men. We are, in fact, just beginning to realize some of the consequences that will follow when the industrial revolution has actually taken place, when the scientific temper of mind has made some genuine headway among the educated classes. Our times belong to the closing period of the old Christian, agricultural civilization. The real challenge of the New World to our older beliefs and institutions is just making itself heard today.

Results of city life

It would be interesting to trace the changes in social habits and organization caused by the growth of cities, the dependence on a loosely centralized credit system, the shift from an economy of want and poverty to one of prosperity and surfeit. In the machine age science itself has been transformed; it has ceased to be a great liberating idea, the Order of Nature, to become primarily a human technique of manipulating materials and men. Art, caught in the stifling coils of mass production, has retreated to a remote refuge above the battle. The ideal of liberty, for which men bled in their escape from medieval social control, finds itself discredited in theory and denied in practice. And today it seems that the great Hebrew-Christian moral tradition, the most ancient part of our heritage, is crumbling to pieces before our very eyes. Its central core of family life is face to face, if not with dissolution, at least with the need for profound reconstruction.

The one institution that has already felt most deeply the new forces is religion. Christianity, in its beliefs and moral standards, was the organizing core of the Old World. It offered an imposing body of doctrine which early felt the shock of the new science. For full three generations the spirit of science has been filtering into the religious idealism with which the nineteenth century started its career. The conflict of "science" with "theology" was the issue in which our fathers consciously faced the problem of reconstructing their beliefs to meet a new world. But today the point of friction between the old civilization and the new has profoundly shifted. It has advanced beyond the nineteenth-century conflict of science and theology to the far more extensive struggle of our whole machine society with the basic moral institutions and ideals of the past. That earlier battle may well prove to have been merely the opening skirmish in a warfare destined to involve literally all the familiar landmarks. Our fathers wondered how long they could still believe in God and immortality; their sons are in doubt how long liberty and democracy and the state, the home and marriage and the Ten Commandments, can possibly endure.

It is religion, however, that just because it has felt the new forces for the longest period, is the most illuminating instance of the changes that are taking place. During the last two generations American religious life has been profoundly transformed. Changes in belief have played a part in this revolution, but it is clear today that they have been less important than the subtler, more indirect, but more pervasive changes effected by our new social environment. The evangelical orthodoxy that calls on all the resources of wealth and business enterprise to sell the gospel of Christ crucified in competition with the other attractions of city life has taken on new form as certainly as has the more conscious religious liberalism that has tried to reconcile traditional beliefs with modern ideas. The experience of men confronted by the opportunities and the limitations of an urban industrialism differs profoundly from that of an agricultural and handicraft society. Naturally the place filled by religion and the forms it shall take must also be different.

Traditional beliefs, to be sure, have, since the eighteenth century, been in conflict with science and intellectual attitudes founded on science. But the causes of the growth of faith in scientific methods of explanation and of the decline of theological ones are themselves social; the immense prestige of science is due to its fundamental position in our industrial and social technology. Now that the cruder mechanistic dogmas of nineteenth-century physics have disappeared from science, there is indeed little logical conflict between religious and scientific beliefs. As things stand today, there is little in natural science to prevent those who ardently desire it to maintain both a faith in religion and a devotion to science. There are plenty of men, raised amid strong religious influences, who feel the appeal of both faiths and have made a satisfactory intellectual adjustment to both.

At the same time, however, the faith in science has grown so strong, so self-sufficient, so deeply rooted in the processes of our society, that many of those who feel it have lost all desire to combine it with any other. For them the scientific faith has prevailed not because it is logically incompatible with religious beliefs, but because it is psychologically incompatible. It has made them seem irrelevant. The man who thinks in terms of modern psychology simply does not entertain the notion of an immortal soul. The man who trusts a physical science to describe the world finds no conceivable place into which to fit a deity. Force and energy he discovers, yes, but nowhere save in human life energy that has moral qualities, that makes consistently for ends men can approve. To deify the radiant energy of the electromagnetic field is to show complete indifference to all that generations of religious prophets have found worthy of worship. Unless men are willing to worship Moloch, they will not find it divine. Men whose minds have become habituated to thinking in scientific terms find other intellectual attitudes superfluous and irrelevant. The philosophies that express their basic interests today are no longer concerned, as they were in the nineteenth century, with vindicating a belief in God and immortality. Those ideas have simply dropped out of any serious attempt to reach an understanding of the world.

It is true that many physicists have recently blossomed forth as liberal theologians. Aware that modern physics has abandoned doctrines that were once hostile to religious claims, they imagine that there is no further conflict between religion and science. But they are abysmally ignorant of all that anthropology and psychology have discovered about the nature of religion itself. They are ignorant of the serious philosophies that have built upon such data. They do not realize that the present conflict of religious faith with science is no longer with a scientific explanation of the world, but with a scientific explanation of religion. The really revolutionary effect of the scientific faith on religion today is not its new view of the universe, but its new view of religion. Reinterpretations of religious belief have been unimportant compared with reinterpretations of religion itself. For those who share them, it has become impossible to view religion as a divine revelation entrusted to man. It has even become impossible to see it as a relation between man and a cosmic deity. Religion has rather appeared a human enterprise, an organization of human life, an experience, a social bond, and an aspiration.

Yet industrialism and city life have been far more subversive than all the scientific theories put together. We are all too familiar with theological difficulties. We are apt to overlook the real religious revolution of the past forty years, the crowding of religion into a minor place by the host of secular faiths and interests. For every man alienated from the church by scientific ideas, there are dozens dissatisfied with its social attitudes, and hundreds who, with no intellectual doubts, have found their lives fully occupied with the other interests and diversions of the machine age. What does it matter that earnest men have found a way to combine older beliefs with the spirit of science, if those beliefs have ceased to express anything vital in men's experience, if the older religious faith is irrelevant to all they really care for? A truly intelligent fundamentalist, indeed, would leave biology alone as of little influence. He would instead try to abolish the automobiles and movies and Sunday papers and golf links that are emptying our churches. Even when the church embraces the new interests, it seems to be playing a losing game.

There is little of specifically religious significance in the manifold activities of the modern institutional church; a dance for the building fund is less of a religious experience than a festival in honor of the patron saint. And any minister knows that his "social activities" spring less from real need than from the fervent desire to attract and hold members. The church itself has been secularized. Its very members continue a half-hearted support, from motives of traditional attachment, of personal loyalty to the minister, of social prestige, because they do not want to live in a churchless community.

For multitudes within the churches themselves the old need of personal salvation has simply lost all reality. The very experience of sin strikes them as a pathological and incomprehensible mystery. The crises that awaken significant emotional response are less and less concerned with the traditional sense of dependence on nature, and more and more with man's relations to his fellows. They cluster about social, human, non-cosmic faiths, beyond question the strongest religious forces today. Patriotism, the cult of the national state, is the most widely shared religion of the Western World. Again and again Christian churches have attached themselves to it to gain strength. The cult of prosperity, too, has in America assumed all the emotional fervor of a true religion. Men worship Mammon in his temples in Wall Street; many banks now have the sanctified atmosphere of churches. They find their visions of heaven in Roxy's cathedral in New York City, and there contemplate the stars in their glory. Doctrinal tenets make little difference; fundamentalist and liberal alike seize every secular appeal they can find to compete with other amusements. They range from earnest social service to sensational sermons on sexual sin; they stage religious vaudeville and angle for publicity. See what has happened to the Man Nobody Knows and the Book Nobody Knows at the hands of the advertising man everybody knows. Jesus is now described as the first publicity man, who "put across the best-paying proposition in the history of insurance." The Last Supper turns out, according to the same view, to have been the first Rotary Club luncheon.

In our cities organized religion has sought social as well as intellectual respectability. To preach against science is for the educated classes hardly in taste. To criticize present social mores is just as questionable.

The fashionable and wealthy congregation on the Avenue wants its religion "harmonized" with science; it wants it even more to come to terms with the social order. Leading liberal preachers are as often as not in charge of flocks where the Republican Party is more sacred than the divinity of Jesus. As much exegetical skill is expended to reinterpret the pacifism of Jesus and the prophets' scorn of wealth as to explain away the accounts of creation.

Religious feelings and needs that demand organized expression are to be found in abundance in our new society. So great is the demand of men for historical continuity that the transformed religious life of our world will surely call itself by old and revered names. But if this altered Christianity involves too great a break with the past, though it display many fine fruits, it will run the risk of forgetting much that men have learned of spiritual wisdom over long centuries. Men are apt to rest too comfortably in the assurance that religion is inevitable and undying. The quality of the religion that will endure is what matters. The danger is that in the shock of meeting the new civilization the religious standards built up in the past will not be raised but lowered. Novel, ignorant, and uncriticized forms of religious life can be strong and vigorous enough; but though they retain honored names, they can be damnable. No one is yet wise enough to predict whether this reconstruction of our religious tradition is to be a reversion to primitive passions or a further step toward the discernment of the highest. It depends upon men's ability to meet the challenge of the new world of science and the machine.

The new forces to which religion has been exposed are today crowding in upon all our inherited institutions. We cannot stop them; we cannot preserve the past unchanged. But it rests with us whether what we cherish in the legacy of past generations is to be lightly discarded or whether it is to be incorporated once more in another synthesis, worthy to take its place in the long series of reconstructions that have given us the rich civilization it is now our opportunity and task to rebuild again.

2. GOD IN MORE SENSES THAN ONE[1]

By Walter Lippmann
Editor of the New York World

But even if there was some uncertainty as to the existence of the God whom William James described, he was at least the kind of God with whom human beings could commune. If they could jump the initial doubt they found themselves in an exciting world where they might live for a God who, like themselves, had work to do. James wrote the passage I have quoted in 1902. A quarter of a century later Alfred North Whitehead came to Harvard to deliver the Lowell lectures. He undertook to define God for modern men.

Mr. Whitehead, like William James, is a compassionate man and on the side of the angels. But his is a wholly modernized mind in full command of all the conceptual instruments of scientific logic. By contrast with the austerity of Mr. Whitehead's thinking, James, with his chivalrous offer of fealty to God, seems like one of the last of the great romantics. There is a God in Mr. Whitehead's philosophy, and a very necessary God at that. Unhappily, I am not enough of a logician to say that I am quite sure I understand what it means to say that "God is not concrete, but He is the ground for concrete actuality." There have been moments when I imagined I had caught the meaning of this, but there have been more moments when I knew that I had not. I have never doubted, however, that the concept had meaning, and that I missed it because it was too deep for me. Why then, it may be asked, do I presume to discuss it? My answer is that a conception of God which is incomprehensible to all who are not highly trained logicians is a possible God for logicians alone. It is not presumptuous to say of Mr. Whitehead's God what he himself says of Aristotle's God: that it does "not lead him very far toward the production of a God available for religious purposes."

For while this God may satisfy a metaphysical need in the thinker, he does not satisfy the passions of the believer. This God does not govern the world like a king nor watch over his children like a father. He offers them no purposes to which they can consecrate themselves; he exhibits no image of holiness they can imitate. He does not chastise them in sin nor console them in sorrow. He is a principle with which to explain the facts, if you can understand the explanation. He is not himself a personality who deals with the facts. For the purposes of religion he is no God at all: his universe remains stonily unaware of man. Nothing has happened by accepting Mr. Whitehead's definition which changes the inexorable character of the destiny which Bertrand Russell depicted when he wrote that

---

[1] Reprinted by permission from Walter Lippmann, *A preface to morals*, The Macmillan Company, 1929, pages 25–30.

> We see, surrounding the narrow raft illumined by the flickering light of human comradeship, the dark ocean on whose rolling waves we toss for a brief hour; from the great night without, a chill blast breaks in upon our refuge; all the loneliness of humanity amid hostile forces is concentrated upon the individual soul, which must struggle alone, with what of courage it can command, against the whole weight of a universe that cares nothing for its hopes and fears.

It is a nice question whether the use of God's name is not misleading when it is applied by modernists to ideas so remote from the God men have worshiped. Plainly the modernist churchman does not believe in the God of Genesis who walked in the garden in the cool of the evening and called to Adam and his wife who had hidden themselves behind a tree; nor in the God of Exodus who appeared to Moses and Aaron and seventy of the Elders of Israel, standing with his feet upon a paved walk as if it were a sapphire stone; nor even the God of the fifty-third chapter of Isaiah who in his compassion for the sheep who have gone astray, having turned everyone to his own way, laid on the Man of Sorrows the iniquity of us all.

This, as Kirsopp Lake says, is the God of most, if not all, the writings in the Bible. Yet "however much our inherited sentiments may shrink from the admission, the scientists are today almost unanimous in saying that the universe as they see it contains no evidence of the existence of any anthropomorphic God whatever. The experimentalist (i.e., modernist) wholly agrees that this is so. Nevertheless he refuses as a rule — and I think rightly — to abandon the use of the word 'God.'" In justification of this refusal to abandon the word "God," although he has abandoned the accepted meaning of the word, Dr. Lake appeals to a tradition which reaches back at least to Origen who, as a Christian Neo-Platonist, used the word "God" to mean, not the King and Father of creation, but the sum of all ideal values. It was this redefinition of the word "God," he says, which "made Christianity possible for educated churchmen like Dr. Lake and Dean Inge.

Dr. Lake admits that, although this attractive bypath of tradition "is intellectually adorned by many princes of thought and lords of language," it is "ecclesiastically not free from reproach." He avows another reason for his use of the word "God" which, if not more compelling, is certainly more worldly. "Atheist" has meant since Roman times an enemy of society; it gives a wholly false impression of the real state of mind of those who adhere to the Platonic tradition. They have been wholly without the defiance which "atheism" connotes: on the contrary they have been a few individuals in each age who lived peaceably within the shelter of the church, worshiping a somewhat different God inwardly and in their own way, and often helping to refresh the more mundane spirit of the popular church. The term "agnostic" is almost as unavailable. It was invented to describe a tolerant unbelief in the anthropomorphic God. In popular usage it has come to mean about the same thing as "atheist," for the instinct of the common man is sound in these matters. He feels that those who claim to be open-minded about God have for all practical purposes ceased to believe in him. The agnostic's reply that he would gladly believe if the evidence would confirm it, does not alter the fact that he does not now believe. And so Dr. Lake concludes that the modernist must use the word "God" in his own sense, "endeavoring partly to preserve Origen's meaning of the word, and partly shrinking from any other policy as open to misconstruction."

I confess that the notion of adopting a policy about God somehow shocks me as intruding a rather worldly consideration which would seem to be wholly out of place. But this feeling is, I am sure, an injustice to Dr. Lake, who is plainly and certainly not a worldling. He is moved, no doubt, by the conviction that in letting "God" mean one thing to the mass of the devout and another to the educated minority, the loss of intellectual precision is more than compensated by the preservation of a community of feeling. This is not mere expediency. It may be the part of wisdom, which is profounder than mere reasoning, to wish that intellectual distinctions shall not divide men too sharply.

But if it is wisdom, it is an aristocratic wisdom. And in Dean Inge's writings this is frankly avowed. "The strength of Christianity," he says, "is in transforming the lives of individuals — of a small minority, certainly, as Christ clearly predicted, but a large number in the aggregate. To rescue a little flock, here and there, from materialism, selfishness, and hatred, is the task of the Church of Christ in all ages alike, and there is no likelihood that it will ever be otherwise."

But in other ages, one thing was otherwise. And in this one thing lies the radical peculiarity of the modern difficulty. In other ages there was no acknowledged distinction between the ultimate beliefs of the educated and the uneducated. There were differences in learning, in religious genius, in the closeness of a chosen few to God and his angels. Inwardly there were even radical differences in meaning. But critical analysis had not made them overt and evident, and the common assumption was that there was one God for all, for the peasant who saw him dimly and could approach him only through his patron saint, and for the holy man who had seen God and talked with him face to face. It has remained for churchmen of our era to distinguish two or more different Gods, and openly to say that they are different. This may be a triumph of candor and of intelligence. But this very consciousness of what they are doing, these very honest admissions that the God of Dean Inge, for example, is only in name the God of millions of other Protestants — that is an admission, when they understand it, which makes faith difficult for modern men.

3. THE CHURCH IN THE ACQUISITIVE SOCIETY [1]

By R. H. Tawney

Sometime Fellow of Balliol College, Oxford

The abdication by the Christian churches of one whole department of life, that of social and political conduct, as the sphere of the powers of this world and of them alone, is one of the capital revolutions through which the human spirit has passed. The medieval church, with all its extravagances and abuses, had asserted the whole compass of human interests to be the province of religion. The disposition to idealize it in the interests of some contemporary ecclesiastical or social propaganda is properly regarded with suspicion. But, though the practice of its officers was often odious, it cannot be denied that the essence of its moral teaching had been the attempts to uphold a rule of right, by which all aspects of human conduct were to be judged, and which was not merely to be preached as an ideal, but to be enforced as a practical obligation upon members of the Christian community. It had claimed, however grossly the claim might be degraded by political intrigues and ambitions, to judge the actions of rulers by a standard superior to political expediency. It had tried to impart some moral significance to the ferocity of the warrior by enlisting him in the service of God. It had even sought, with a self-confidence which was noble, if perhaps oversanguine, to bring the contracts of business and the transactions of economic life within the scope of a body of Christian casuistry.

---

[1] Reprinted with the permission of the author from his *Acquisitive society*, Bell and Sons, Ltd., 1924, pages 231–242.

The churches of the nineteenth century had no strong assurance of the reality of any spiritual order invisible to the eye of sense, which was to be upheld, however much it might be divided, however violent the contrast which it offered to the social order created by men. Individuals among their officers and members spoke and acted as men who had; but they were rarely followed, and sometimes repudiated. Possessing no absolute standards of their own, the churches were at the mercy of those who did possess them. They relieved the wounded, and comforted the dying, but they dared not enter the battle. For men will fight only for a cause in which they believe, and what the churches lacked was not personal virtue, or public spirit, or practical wisdom, but something more simple and more indispensable, something which the Children of Light are supposed to impart to the Children of This World, but which they could not impart, because they did not possess it — faith in their own creed and in their vocation to make it prevail. So they made religion the ornament of leisure, instead of the banner of a Crusade. They became the home of "a fugitive and cloistered virtue, unexercised and unbreathed, that never sallies out and seeks her adversary, but slinks out of the race, where that immortal garland is to be run for, not without dust and heat." They acquiesced in the popular assumption that the acquisition of riches was the main end of man, and confined themselves to preaching such personal virtues as did not conflict with its achievement.

The world has now sufficient experience to judge the truth of the doctrine — the Gospel according to the Churches of Laodicea — which affirms that the power of religion in the individual soul is nicely proportioned to its powerlessness in society. Whether the life of the spirit is made easier for the individual by surrendering his social environment to a ruthless economic egotism is a question which each man must answer for himself. In the sphere of social morality the effect of that philosophy is not dubious. The rejection of the social ethics of Christianity was only gradually felt, because they were the school in which individuals continued to be educated long after other standards had taken their place as the criterion for judging institutions, policy, the conduct of business, the organization of industry, and public affairs. Its fruits, though they matured slowly, are now being gathered. In our own day the horrors which sixty years ago were thought to be exorcised by the advance of civilization have one by one rolled back, the rule of the sword and of the assassin hired by governments, as in Ireland, a hardly veiled slavery, as in East Africa, a contempt for international law by the great Powers which would have filled an earlier generation with amazement, and in England the prostitution of humanity and personal honor and the decencies of public life to the pursuit of money.

These things have occurred before, in ages which were nominally Christian. What is distinctive of our own is less its occasional relapses or aberrations, than its assumption that the habitual conduct and organization of society is a matter to which religion is merely irrelevant. That attempt to conduct human affairs in the light of no end other that the temporary appetites of individuals has as its natural consequences oppression, the unreasoning and morbid pursuit of pecuniary gain of which the proper name is the sin of avarice, and civil war. In so far as Christianity is taken seriously, it destroys alike the arbitrary power of the few and the slavery of many, since it maintains a standard by which both are condemned — a standard which men did not create and which is independent of their convenience or desires. By affirming that all men are the children of God, it insists that the rights of all men are equal. By affirming that men are men and nothing more, it is a warning that those rights are conditional and derivative — a commission of service, not a property. To such a faith nothing is common or unclean, and in a Christian society social institutions, economic activity, industrial organization, cease to be either indifferent or merely means for the satisfaction of human appetites. They are judged, not merely by their convenience, but by standards of right and wrong. They become stages in the progress of mankind to perfection, and derive a certain sacramental significance from the spiritual end to which, if only as a kind of squalid scaffolding, they are ultimately related.

Hence the opinion, so frequently expressed, that the religion of a society makes no practical difference to the conduct of its affairs is not only contrary to experience, but of its very nature superficial. The creed of indifferentism, detached from the social order which is the greatest and most massive expression of the scale of values that is the working faith of a society, may make no difference, except to damn more completely those who profess it. But then, so tepid and self-regarding a creed is not a religion. Christianity cannot allow its sphere to be determined by the convenience of politicians or by the conventional ethics of the world of business. The whole world of human interest was assigned to it as its province. "The law of divinity is to lead the lowest through the intermediate to the highest things." In discharging its commission, therefore, a Christian church will constantly enter the departments of politics and of economic relations, because it is only a bad modern convention which allows men to forget that these things, as much as personal conduct, are the sphere of the spirit and the expression of character. It will insist that membership in it involves obedience to a certain rule of life, and the renunciation of the prizes offered by economic mastery.

A rule of life, a discipline, a standard and habit of conduct in the social relations which make up the texture of life for the mass of mankind — the establishment of these among its own members, and their maintenance by the corporate conscience of the Christian society, are among the most vital tasks of any church which takes its religion seriously. It is idle for it to expound the Christian faith to those who do not accept it, unless at the same time it is the guardian of the way of life involved in that faith among those who nominally do. Either a church is a society, or it is nothing. But, if a society is to exist, it must possess a corporate mind and will. And if the church, which is a Christian society, is to exist, its mind and will must be set upon that type of conduct which is specifically Christian. Hence the acceptance by its members of a rule of life is involved in the very essence of the church. They will normally fail, of course, to live up to it. But when it ceases altogether to attract them, when they think it, not the truest wisdom, but impracticable folly, when they believe that the acceptance of Christianity is compatible with any rule of life whatsoever or with no rule of life at all, they have ceased, in so far as their own choice can affect the matter, to be members of the "church militant here on earth." When all its members — were that conceivable — have made such a choice, that church has ceased to exist.

The demand that a church should possess and exercise powers of moral discipline is not, therefore, the expression of that absurd, if innocent, pose, a romantic and undiscriminating medievalism. Such powers are a necessary element in the life of a church, because they are a necessary element in the life of any society whatsoever. It is arguable that a church ought not to exist; it is not arguable that, when it exists, it should lack the powers which are indispensable to any genuine vitality. It ought to be the greatest of societies, since it is concerned with the greatest and most enduring interests of mankind. But if it has not the authority to discipline its own members, which is possessed by the humblest secular association, from an athletic club to a trade union, it is not a society at all. The recovery and exercise of that authority is thus among the most important of the practical reforms in its own organization at which a church, if it does not already possess it, can aim, since, without it, it cannot, properly speaking, be said fully to exist.

If a church reasserts and applies its moral authority, if it insists that, while no man is compelled to belong to it, membership involves duties as well as privileges, if it informs its members that they have assumed obligations which preclude them from practicing certain common kinds of economic conduct and from aiming at certain types of success which are ordinarily esteemed, two consequences are likely to follow.

It cannot, in the first place, continue to be established. It will probably, in the second place, lose the nominal support of a considerable number of those who regard themselves as its adherents. Such a decline in membership will, however, be a blessing, not a misfortune. The tradition of universal allegiance which the church — to speak without distinction of denominations — has inherited from an age in which the word "Christendom" had some meaning, is a source, not of strength, but of weakness. It is a weakness, because, in the circumstances of the twentieth century, it is fundamentally, if unconsciously, insincere. The position of the church today is not that of the Middle Ages. It resembles more nearly that of the church in the Roman Empire before the conversion of Constantine. Christians are a sect, and a small sect, in a pagan society. But they can be a sincere sect. If they are sincere, they will not abuse the pagans, as sometimes in the past they were inclined to do; for a good pagan is an admirable person. But he is not a Christian, for his hopes and fears, his preferences and dislikes, his standards of success and failure, are different from those of Christians. The church will not pretend that he is, or endeavor to make its own faith acceptable to him by diluting the distinctive ethical attributes of Christianity, till they become inoffensive, at the cost of becoming trivial.

"He hath put down the mighty from their seat and hath exalted the humble and meek." A society which is fortunate enough to possess so revolutionary a basis, a society whose Founder was executed as the enemy of law and order, need not seek to soften the materialism of principalities and powers with mild doses of piety administered in an apologetic whisper. It will teach as one having authority, and will have sufficient confidence in its faith to believe that it requires neither artificial protection nor judicious understatement in order that such truth as there is in it may prevail. It will appeal to mankind, not because its standards are identical with those of the world, but because they are profoundly different. It will win its converts, not because membership involves no change in their manner of life, but because it involves a change so complete as to be ineffaceable. It will expect its adherents to face economic ruin for the sake of their principles with the same alacrity as, till recently, it was faced every day by the workman who sought to establish trade unionism among his fellows. It will define, with the aid of those of its members who are engaged in different trades and occupations, the lines of conduct and organization which approach most nearly to being the practical application of Christian ethics in the various branches of economic life, and, having defined them, will censure those of its members who depart from them without good reason. It will rebuke the open and notorious sin of the man who oppresses his fellows for the sake of gain as freely as that of the drunkard or adulterer. It will voice frankly the judgment of the Christian conscience on the acts of the state, even when to do so is an offense to nine-tenths of its fellow citizens. Like missionary churches in Africa today, it will have as its aim, not merely to convert the individual, but to make a new kind, and a Christian kind, of civilization.

Such a religion is likely to be highly inconvenient to all parties and persons who desire to dwell at ease in Zion. But it will not, at any rate, be a matter of indifference. The marks of its influence will not be comfort, but revolt and persecution. It will bring not peace but a sword. Yet its end is peace. It is to harmonize the discords of human society, by relating its activities to the spiritual purpose from which they derive their significance. The famous lines in which Piccarda explains to Dante the order of Paradise are a description of a complex and multiform society which is united by overmastering devotion to a common end. By that end all stations are assigned and all activities are valued. The parts derive their quality from their place in the system, and are so permeated by the unity which they express that they themselves are glad to be forgotten, as the ribs of an arch carry the eye from the floor from which they spring to the vault in which they meet and interlace.

Such a combination of unity and diversity is possible only to a society which subordinates its activities to the principle of purpose. For what that principle offers is not merely a standard for determining the relations of different classes and groups of producers, but a scale of moral values. Above all, it assigns to economic activity itself its proper place as the servant, not the master, of society. The burden of our civilization is not merely, as many suppose, that the product of industry is ill-distributed, or its conduct tyrannical, or its operation interrupted by embittered disagreements. It is that industry itself has come to hold a position of exclusive predominance among human interests, which no single interest, and least of all the provision of the material means of existence, is fit to occupy. Like a hypochondriac who is so absorbed in the processes of his own digestion that he goes to his grave before he has begun to live, industrialized communities neglect the very objects for which it is worth while to acquire riches in their feverish preoccupation with the means by which riches can be acquired.

That obsession by economic issues is as local and transitory as it is repulsive and disturbing. To future generations it will appear as pitiable as the obsession of the seventeenth century by religious quarrels appears today; indeed, it is less rational, since the object with which it is concerned is less important. And it is a poison which inflames every wound and turns each trivial scratch into a malignant ulcer. Society will not solve the particular problems of industry which afflict it, until that poison is expelled, and it has learned to see industry itself in the right perspective. If it is to do that, it must rearrange its scale of values. It must regard economic interests as one element in life, not as the whole of life. It must persuade its members to renounce the opportunity of gains which accrue without any corresponding service, because the struggle for them keeps the whole community in a fever. It must so organize its industry that the instrumental character of economic activity is emphasized by its subordination to the social purpose for which it is carried on.

LXVIII. FREEDOM OF THOUGHT

1. ON LIBERTY OF THOUGHT AND DISCUSSION[1]

By John Stuart Mill

Mankind can hardly be too often reminded that there was once a man named Socrates, between whom and the legal authorities and public opinion of his time there took place a memorable collision. Born in an age and country abounding in individual greatness, this man has been handed down to us by those who best knew both him and the age, as the most virtuous man in it; while *we* know him as the head and prototype of all subsequent teachers of virtue, the source equally of the lofty inspiration of Plato and the judicious utilitarianism of Aristotle, "*i maestri di color che sanno,*" the two headsprings of ethical as of all other philosophy. This acknowledged master of all the eminent thinkers who have since lived — whose fame, still growing after more than two thousand years, all but outweighs the whole remainder of the names which make his native city illustrious — was put to death by his countrymen, after a judicial conviction, for impiety and immorality. Impiety, in denying the gods recognized by the state; indeed his accuser asserted (see the *Apologia*) that he believed in no gods at all. Immorality, in being, by his doctrines and instructions, a "corruptor of youth." Of these charges the tribunal, there is every ground for believing, honestly found him guilty, and condemned the man who probably of all then born had deserved best of mankind to be put to death as a criminal.

To pass from this to the only other instance of judicial iniquity the mention of which, after the condemnation of Socrates, would not be an anticlimax: the event which took place on Calvary rather more than eighteen hundred years ago. The man who left on the memory of those who witnessed his life and conversation such an impression of his moral grandeur that eighteen subsequent centuries have done homage to him as the Almighty in person, was ignominiously put to death, as what?

---

[1] Reprinted from Chapter II of John Stuart Mill's *Essay on liberty.*

As a blasphemer. Men did not merely mistake their benefactor; they mistook him for the exact contrary of what he was, and treated him as that prodigy of impiety which they themselves are now held to be for their treatment of him. The feelings with which mankind now regard these lamentable transactions, especially the later of the two, render them extremely unjust in their judgment of the unhappy actors. These were, to all appearance, not bad men — not worse than men commonly are, but rather the contrary; men who possessed in a full, or somewhat more than a full measure, the religious, moral, and patriotic feelings of their time and people: the very kind of men who, in all times, our own included, have every chance of passing through life blameless and respected. The high priest who rent his garments when the words were pronounced, which, according to all the ideas of his country, constituted the blackest guilt, was in all probability quite as sincere in his horror and indignation as the generality of respectable and pious men now are in the religious and moral sentiments they profess; and most of those who now shudder at his conduct, if they had lived in his time, and been born Jews, would have acted precisely as he did. Orthodox Christians who are tempted to think that those who stoned to death the first martyrs must have been worse men than they themselves are, ought to remember that one of those persecutors was Saint Paul.

Let us add one more example, the most striking of all, if the impressiveness of an error is measured by the wisdom and virtue of him who falls into it. If ever anyone, possessed of power, had grounds for thinking himself the best and most enlightened among his contemporaries, it was the emperor Marcus Aurelius. Absolute monarch of the whole civilized world, he preserved through life not only the most unblemished justice, but what was less to be expected from his Stoical breeding, the tenderest heart. The few failings which are attributed to him were all on the side of indulgence: while his writings, the highest ethical product of the ancient mind, differ scarcely perceptibly, if they differ at all, from the most characteristic teachings of Christ. This man, a better Christian in all but the dogmatic sense of the world than almost any of the ostensibly Christian sovereigns who have since reigned, persecuted Christianity. Placed at the summit of all the previous attainments of humanity, with an open, unfettered intellect, and a character which led him of himself to embody in his moral writings the Christian ideal, he yet failed to see that Christianity was to be a good and not an evil to the world, with his duties to which he was so deeply penetrated. Existing society he knew to be in a deplorable state. But such as it was, he saw, or thought he saw, that it was held together, and prevented from being worse, by belief and reverence of the received divinities. As a ruler of mankind, he deemed it his duty not to suffer society to fall in pieces; and saw not how, if its existing ties were removed, any others could be formed which could again knit it together. The new religion openly aimed at dissolving these ties: unless, therefore, it was his duty to adopt that religion, it seemed to be his duty to put it down. Inasmuch, then, as the theology of Christianity did not appear to him true or of divine origin; inasmuch as this strange history of a crucified God was not credible to him, and a system which purported to rest entirely upon a foundation to him so wholly unbelievable could not be foreseen by him to be that renovating agency which, after all abatements, it has in fact proved to be; the gentlest and most amiable of philosophers and rulers, under a solemn sense of duty, authorized the persecution of Christianity. To my mind this is one of the most tragical facts in all history. It is a bitter thought, how different a thing the Christianity of the world might have been, if the Christian faith had been adopted as the religion of the Empire under the auspices of Marcus Aurelius instead of those of Constantine. But it would be equally unjust to him and false to truth to deny, that no one plea which can be urged for punishing anti-Christian teaching was wanting to Marcus Aurelius for punishing, as he did, the propagation of Christianity. No Christian more firmly believes that atheism is false, and tends to the dissolution of society, than Marcus Aurelius believed the same things of Christianity; he who, of all men then living, might have been thought the most capable of appreciating it. Unless anyone who approves of punishment for the promulgation of opinions flatters himself that he is a wiser and better man than Marcus Aurelius — more deeply versed in the wisdom of his time, more elevated in his intellect above it, more earnest in his search for truth, or more single-minded in his devotion to it when found — let him abstain from that assumption of the joint infallibility of himself and the multitude, which the great Antoninus made with so unfortunate a result.

Aware of the impossibility of defending the use of punishment for restraining irreligious opinions by any argument which will not justify Marcus Antoninus, the enemies of religious freedom, when hard pressed, occasionally accept this consequence, and say, with Dr. Johnson, that the persecutors of Christianity were in the right; that persecution is an ordeal through which truth ought to pass, and always passes successfully, legal penalties being, in the end, powerless against truth, though sometimes beneficially effective against mischievous errors. This is a form of the argument for religious intolerance sufficiently remarkable not to be passed without notice.

A theory which maintains that truth may justifiably be persecuted because persecution cannot possibly do it any harm, cannot be charged with being intentionally hostile to the reception of new truths; but we cannot commend the generosity of its dealing with the persons to whom mankind are indebted for them. To discover to the world something which deeply concerns it, and of which it was previously ignorant; to prove to it that it had been mistaken on some vital point of temporal or spiritual interest, is as important a service as a human being can render to his fellow creatures, and in certain cases, as in those of the early Christians and of the Reformers, those who think with Dr. Johnson believe it to have been the most precious gift which could be bestowed on mankind. That the authors of such splendid benefits should be requited by martyrdom; that their reward should be to be dealt with as the vilest of criminals, is not, upon this theory, a deplorable error and misfortune, for which humanity should mourn in sackcloth and ashes, but the normal and justifiable state of things. The propounder of a new truth, according to this doctrine, should stand, as stood, in the legislation of the Locrians, the proposer of a new law, with a halter round his neck, to be instantly tightened if the public assembly did not, on hearing his reasons, then and there adopt his proposition. People who defend this mode of treating benefactors cannot be supposed to set much value on the benefit; and I believe this view of the subject is mostly confined to the sort of persons who think that new truths may have been desirable once, but that we have had enough of them now.

But, indeed, the dictum that truth always triumphs over persecution is one of those pleasant falsehoods which men repeat after one another till they pass into commonplaces, but which all experience refutes. History teems with instances of truth put down by persecution. If not suppressed for ever, it may be thrown back for centuries. To speak only of religious opinions: the Reformation broke out at least twenty times before Luther, and was put down. Arnold of Brescia was put down. Fra Dolcino was put down. Savonarola was put down. The Albigeois were put down. The Vaudois were put down. The Lollards were put down. The Hussites were put down. Even after the era of Luther, wherever persecution was persisted in, it was successful. In Spain, Italy, Flanders, the Austrian Empire, Protestantism was rooted out; and, most likely, would have been so in England, had Queen Mary lived, or Queen Elizabeth died. Persecution has always succeeded, save where the heretics were too strong a party to be effectually persecuted. No reasonable person can doubt that Christianity might have been extirpated in the Roman Empire. It spread, and became predominant, because the persecutions were only occasional, lasting but a short time, and separated by long intervals of almost undisturbed propagandism. It is a piece of idle sentimentality that truth, merely as truth, has any inherent power denied to error of prevailing against the dungeon and the stake. Men are not more zealous for truth than they often are for error, and a sufficient application of legal or even of social penalties will generally succeed in stopping the propagation of either. The real advantage which truth has consists in this, that when an opinion is true, it may be extinguished once, twice, or many times, but in the course of ages there will generally be found persons to rediscover it, until some one of its reappearances falls on a time when from favorable circumstances it escapes persecution until it has made such head as to withstand all subsequent attempts to suppress it.

It will be said that we do not now put to death the introducers of new opinions: we are not like our fathers who slew the prophets, we even build sepulchers to them. It is true we no longer put heretics to death; and the amount of penal infliction which modern feeling would probably tolerate, even against the most obnoxious opinions, is not sufficient to extirpate them. But let us not flatter ourselves that we are yet free from the stain even of legal persecution. Penalties for opinion, or at least for its expression, still exist by law; and their enforcement is not, even in these times, so unexampled as to make it at all incredible that they may some day be revived in full force. In the year 1857, at the summer assizes of the county of Cornwall, an unfortunate man, said to be of unexceptionable conduct in all relations of life, was sentenced to twenty-one months' imprisonment, for uttering, and writing on a gate, some offensive words concerning Christianity. Within a month of the same time, at the Old Bailey, two persons, on two separate occasions, were rejected as jurymen, and one of them grossly insulted by the judge and by one of the counsel, because they honestly declared that they had no theological belief; and a third, a foreigner, for the same reason, was denied justice against a thief. This refusal of redress took place in virtue of the legal doctrine that no person can be allowed to give evidence in a court of justice who does not profess belief in a god (any god is sufficient) and in a future state; which is equivalent to declaring such persons to be outlaws, excluded from the protection of the tribunals; who may not only be robbed or assaulted with impunity, if no one but themselves, or persons of similar opinions, be present, but anyone else may be robbed or assaulted with impunity, if the proof of the fact depends on their evidence. The assumption on which this is grounded is that the oath is worthless of a person who does not believe in a future state; a proposition which betokens much ignorance of history in those who assent to it (since it is historically true that a large proportion of infidels in all ages have been persons of distinguished integrity and honor); and would be maintained by no one who had the smallest conception how many of the persons in greatest repute with the world, both for virtues and attainments, are well known, at least to their intimates, to be unbelievers. The rule, besides, is suicidal, and cuts away its own foundation. Under pretense that atheists must be liars, it admits the testimony of all atheists who are willing to lie, and rejects only those who brave the obloquy of publicly confessing a detested creed rather than affirm a falsehood. A rule thus self-convicted of absurdity so far as regards its professed purpose, can be kept in force only as a badge of hatred, a relic of persecution; a persecution, too, having the peculiarity that the qualification for undergoing it is the being clearly proved not to deserve it. The rule, and the theory it implies, are hardly less insulting to believers than to infidels. For if he who does not believe in a future state necessarily lies, it follows that they who do believe are only prevented from lying, if prevented they are, by the fear of hell. We will not do the authors and abettors of the rule the injury of supposing that the conception which they have formed of Christian virtue is drawn from their own consciousness.

These, indeed, are but rags and remnants of persecution, and may be thought to be not so much an indication of the wish to persecute, as an example of that very frequent infirmity of English minds, which makes them take a preposterous pleasure in the assertion of a bad principle, when they are no longer bad enough to desire to carry it really into practice. But unhappily there is no security in the state of the public mind that the suspension of worse forms of legal persecution, which has lasted for about the space of a generation, will continue. In this age the quiet surface of routine is as often ruffled by attempts to resuscitate past evils, as to introduce new benefits. What is boasted of at the present time as the revival of religion, is always, in narrow and uncultivated minds, at least as much the revival of bigotry; and where there is the strong permanent leaven of intolerance in the feelings of a people, which at all times abides in the middle classes of this country, it needs but little to provoke them into actively persecuting those whom they have never ceased to think proper objects of persecution.[1] For it is this — it is the opinions men entertain, and the feelings they cherish, respecting those who disown the beliefs they deem important, which makes this country not a place of mental freedom. For a long time past, the chief mischief of the legal penalties is that they strengthen the social stigma. It is that stigma which is really effective, and so effective is it, that the profession of opinions which are under the ban of society is much less common in England than is, in many other countries, the avowal of those which incur risk of judicial punishment. In respect to all persons but those whose pecuniary circumstances make them independent of the good will of other people, opinion, on this subject, is as efficacious as law; men might as well be imprisoned as excluded from the means of earning their bread. Those whose bread is already secured, and who desire no favors from men in power, or from bodies of men, or from the public, have nothing to fear from the open avowal of any opinions, but to be ill thought of and ill spoken of, and this it ought not to require a very heroic mold to enable them to bear. There is no room for any appeal *ad misericordiam* in behalf of such persons. But though we do not now inflict so much evil on those who think differently from us as it was formerly our custom to do, it may be that we do ourselves as much evil as ever by our treatment of them. Socrates was put to death, but the Socratic philosophy rose like the sun in heaven, and spread its illumination over the whole intellectual firmament. Christians were cast to the lions, but the Christian church grew up a stately and spreading tree, overtopping the older and less vigorous growths, and stifling them by its shade. Our merely social intolerance kills no one, roots out no opinions, but induces men to disguise them, or to abstain from any active effort for their diffusion. With us, heretical opinions do not perceptibly gain, or even lose, ground in each decade or generation; they never blaze out far and wide, but continue to smolder in the narrow circles of thinking and studious persons among whom they originate, without ever lighting up the general affairs of mankind with either a true or a deceptive light. And thus is kept up a state of things very

---

[1] Ample warning may be drawn from the large infusion of the passions of a persecutor, which mingled with the general display of the worst parts of our national character on the occasion of the Sepoy insurrection. The ravings of fanatics or charlatans from the pulpit may be unworthy of notice; but the heads of the Evangelical party have announced as their principle for the government of Hindoos and Mahomedans, that no schools be supported by public money in which the Bible is not taught, and by necessary consequence that no public employment be given to any but real or pretended Christians. An Undersecretary of State, in a speech delivered to his constituents on the 12th of November, 1857, is reported to have said: "Toleration of their faith [the faith of a hundred millions of British subjects], the superstition which they call religion, by the British government, had had the effect of retarding the ascendancy of the British name, and preventing the salutary growth of Christianity. . . . Toleration was the great corner stone of the religious liberties of this country; but do not let them abuse that precious word toleration. As he understood it, it meant the complete liberty to all, freedom of worship, *among Christians, who worshiped upon the same foundation*. It meant toleration of all sects and denominations of *Christians who believed in the one mediation*." I desire to call attention to the fact, that a man who has been deemed fit to fill a high office in the government of this

---

country under a Liberal ministry, maintains the doctrine that all who do not believe in the divinity of Christ are beyond the pale of toleration. Who, after this imbecile display, can indulge the illusion that religious persecution has passed away, never to return?

satisfactory to some minds, because, without the unpleasant process of fining or imprisoning anybody, it maintains all prevailing opinions outwardly undisturbed, while it does not absolutely interdict the exercise of reason by dissentients afflicted with the malady of thought. A convenient plan for having peace in the intellectual world, and keeping all things going on therein very much as they do already. But the price paid for this sort of intellectual pacification is the sacrifice of the entire moral courage of the human mind. A state of things in which a large portion of the most active and inquiring intellects find it advisable to keep the general principles and grounds of their convictions within their own breasts, and attempt, in what they address to the public, to fit as much as they can of their own conclusions to premises which they have internally renounced, cannot send forth the open, fearless characters, and logical, consistent intellects who once adorned the thinking world. The sort of men who can be looked for under it, are either mere conformers to commonplace, or time-servers for truth, whose arguments on all great subjects are meant for their hearers, and are not those which have convinced themselves. Those who avoid this alternative do so by narrowing their thoughts and interest to things which can be spoken of without venturing within the region of principles, that is, to small practical matters, which would come right of themselves, if but the minds of mankind were strengthened and enlarged, and which will never be made effectually right until then: while that which would strengthen and enlarge men's minds, free and daring speculation on the highest subjects, is abandoned.

Those in whose eyes this reticence on the part of heretics is no evil should consider, in the first place, that in consequence of it there is never any fair and thorough discussion of heretical opinions; and that such of them as could not stand such a discussion, though they may be prevented from spreading, do not disappear. But it is not the minds of heretics that are deteriorated most by the ban placed on all inquiry which does not end in the orthodox conclusions. The greatest harm done is to those who are not heretics, and whose whole mental development is cramped, and their reason cowed, by the fear of heresy. Who can compute what the world loses in the multitude of promising intellects combined with timid characters, who dare not follow out any bold, vigorous, independent train of thought, lest it should land them in something which would admit of being considered irreligious or immoral? Among them we may occasionally see some man of deep conscientiousness, and subtle and refined understanding, who spends a life in sophisticating with an intellect which he cannot silence, and exhausts the resources of ingenuity in attempting to reconcile the promptings of his conscience and reason with orthodoxy, which yet he does not, perhaps, to the end succeed in doing. No one can be a great thinker who does not recognize that as a thinker it is his first duty to follow his intellect to whatever conclusions it may lead. Truth gains more even by the errors of one who, with due study and preparation, thinks for himself, than by the true opinions of those who only hold them because they do not suffer themselves to think. Not that it is solely, or chiefly, to form great thinkers, that freedom of thinking is required. On the contrary, it is as much and even more indispensable to enable average human beings to attain the mental stature which they are capable of. There have been, and may again be, great individual thinkers in a general atmosphere of mental slavery. But there never has been, nor ever will be, in that atmosphere an intellectually active people. Where any people has made a temporary approach to such a character, it has been because the dread of heterodox speculation was for a time suspended. Where there is a tacit convention that principles are not to be disputed; where the discussion of the greatest questions which can occupy humanity is considered to be closed, we cannot hope to find that generally high scale of mental activity which has made some periods of history so remarkable. Never when controversy avoided the subjects which are large and important enough to kindle enthusiasm, was the mind of a people stirred up from its foundations, and the impulse given which raised even persons of the most ordinary intellect to something of the dignity of thinking beings. Of such we have had an example in the condition of Europe during the times immediately following the Reformation; another, though limited to the Continent and to a more cultivated class, in the speculative movement of the latter half of the eighteenth century; and a third, of still briefer duration, in the intellectual fermentation of Germany during the Goethean and Fichtean period. These periods differed widely in the particular opinions which they developed;

but were alike in this, that during all three the yoke of authority was broken. In each, an old mental despotism had been thrown off, and no new one had yet taken its place. The impulse given at these three periods has made Europe what it now is. Every single improvement which has taken place either in the human mind or in institutions, may be traced distinctly to one or other of them. Appearances have for some time indicated that all three impulses are well-nigh spent; and we can expect no fresh start until we again assert our mental freedom.

Let us now pass to the second division of the argument, and dismissing the supposition that any of the received opinions may be false, let us assume them to be true, and examine into the worth of the manner in which they are likely to be held, when their truth is not freely and openly canvassed. However unwillingly a person who has a strong opinion may admit the possibility that his opinion may be false, he ought to be moved by the consideration that, however true it may be, if it is not fully, frequently, and fearlessly discussed, it will be held as a dead dogma, not a living truth.

There is a class of persons (happily not quite so numerous as formerly) who think it enough if a person assents undoubtingly to what they think true, though he has no knowledge whatever of the grounds of the opinion, and could not make a tenable defense of it against the most superficial objections. Such persons, if they can once get their creed taught from authority, naturally think that no good, and some harm, comes of its being allowed to be questioned. Where their influence prevails, they make it nearly impossible for the received opinion to be rejected wisely and considerately, though it may still be rejected rashly and ignorantly; for to shut out discussion entirely is seldom possible, and when it once gets in, beliefs not grounded on conviction are apt to give way before the slightest semblance of an argument. Waiving, however, this possibility — assuming that the true opinion abides in the mind, but abides as a prejudice, a belief independent of, and proof against, argument — this is not the way in which truth ought to be held by a rational being. This is not knowing the truth. Truth, thus held, is but one superstition the more, accidentally clinging to the words which enunciate a truth.

If the intellect and judgment of mankind ought to be cultivated, a thing which Protestants at least do not deny, on what can these faculties be more appropriately exercised by anyone, than on the things which concern him so much that it is considered necessary for him to hold opinions on them? If the cultivation of the understanding consists in one thing more than in another, it is surely in learning the grounds of one's own opinions. Whatever people believe, on subjects on which it is of the first importance to believe rightly, they ought to be able to defend against at least the common objections. But, someone may say, "Let them be *taught* the grounds of their opinions. It does not follow that opinions must be merely parroted because they are never heard controverted. Persons who learn geometry do not simply commit the theorems to memory, but understand and learn likewise the demonstrations; and it would be absurd to say that they remain ignorant of the grounds of geometrical truths, because they never hear anyone deny, and attempt to disprove them." Undoubtedly: and such teaching suffices on a subject like mathematics, where there is nothing at all to be said on the wrong side of the question. The peculiarity of the evidence of mathematical truths is that all the argument is on one side. There are no objections, and no answers to objections. But on every subject on which difference of opinion is possible, the truth depends on a balance to be struck between two sets of conflicting reasons. Even in natural philosophy, there is always some other explanation possible of the same facts; some geocentric theory instead of heliocentric, some phlogiston instead of oxygen; and it has to be shown why that other theory cannot be the true one: and until this is shown, and until we know how it is shown, we do not understand the grounds of our opinion. But when we turn to subjects infinitely more complicated, to morals, religion, politics, social relations, and the business of life, three-fourths of the arguments for every disputed opinion consist in dispelling the appearances which favor some opinion different from it. The greatest orator, save one, of antiquity, has left it on record that he always studied his adversary's case with as great, if not still greater, intensity than even his own. What Cicero practiced as the means of forensic success requires to be imitated by all who study any subject in order to arrive at the truth. He who knows only his own side of the case knows little of that. His reasons may be good, and no one may have been able to refute them. But if he is equally unable to refute the reasons on the opposite side; if he does not so much as know what they are, he has no ground for preferring either opinion. The rational position for him would be suspension of judgment, and unless he contents himself with that, he is either led by authority, or adopts, like the generality of the world, the side to which he feels most inclination. Nor is it enough that he should hear the arguments of adversaries from his own teachers, presented as they state them, and accompanied by what they offer as refutations. That is not the way to do justice to the arguments, or bring them into real contact with his own mind. He must be able to hear them from persons who actually believe them; who defend them in earnest, and do their very utmost for them. He must know them in their most plausible and persuasive form; he must feel the whole force of the difficulty which the true view of the subject has to encounter and dispose of; else he will never really possess himself of the portion of truth which meets and removes that difficulty. Ninety-nine in a hundred of what are called educated men are in this condition; even of those who can argue fluently for their opinions. Their conclusion may be true, but it might be false for anything they know: they have never thrown themselves into the mental position of those who think differently from them, and considered what such persons may have to say; and consequently they do not, in any proper sense of the word, know the doctrine which they themselves profess. They do not know those parts of it which explain and justify the remainder; the consideration which show that a fact which seemingly conflicts with another is reconcilable with it, or that, of two apparently strong reasons, one and not the other ought to be preferred. All that part of the truth which turns the scale, and decides the judgment of a completely informed mind, they are strangers to; nor is it ever really known, but to those who have attended equally and impartially to both sides, and endeavored to see the reasons of both in the strongest light. So essential is this discipline to a real understanding of moral and human subjects, that if opponents of all important truths do not exist, it is indispensable to imagine them, and supply them with the strongest arguments which the most skillful devil's advocate can conjure up.

To abate the force of these considerations, an enemy of free discussion may be supposed to say, that there is no necessity for mankind in general to know and understand all that can be said against or for their opinions by philosophers and theologians. That it is not needful for common men to be able to expose all the misstatements or fallacies of an ingenious opponent. That it is enough if there is always somebody capable of answering them, so that nothing likely to mislead uninstructed persons remains unrefuted. That simple minds, having been taught the obvious grounds of the truths inculcated on them, may trust to authority for the rest, and being aware that they have neither knowledge nor talent to resolve every difficulty which can be raised, may repose in the assurance that all those which have been raised have been or can be answered, by those who are specially trained to the task.

Conceding to this view of the subject the utmost that can be claimed for it by those most easily satisfied with the amount of understanding of truth which ought to accompany the belief of it; even so, the argument for free discussion is no way weakened. For even this doctrine acknowledges that mankind ought to have a rational assurance that all objections have been satisfactorily answered; and how are they to be answered if that which requires to be answered is not spoken? or how can the answer be known to be satisfactory, if the objectors have no opportunity of showing that it is unsatisfactory? If not the public, at least the philosophers and theologians who are to resolve the difficulties, must make themselves familiar with those difficulties in their most puzzling form; and this cannot be accomplished unless they are freely stated, and placed in the most advantageous light which they admit of. The Catholic Church has its own way of dealing with this embarrassing problem. It makes a broad separation between those who can be permitted to receive its doctrines on conviction, and those who must accept them on trust. Neither, indeed, are allowed any choice as to what they will accept; but the clergy, such at least as can be fully confided in, may admissibly and meritoriously make themselves acquainted with the arguments of opponents, in order to answer them, and may, therefore, read heretical books; the laity, not unless by special permission, hard to be obtained. This discipline recognizes a knowledge of the enemy's case as beneficial to the teachers, but finds means, consistent with this, of denying it to the rest of the world: thus giving to the élite more mental culture, though not more mental freedom, than it allows to the mass. By this device it succeeds in obtaining the kind of mental superiority which its purposes require; for though culture without freedom never made a large and liberal mind, it can make a clever *nisi prius* advocate of a cause. But in countries professing Protestantism, this resource is denied; since Protestants hold, at least in theory, that the responsibility for the choice of a religion must be borne by each for himself, and cannot be thrown off upon teachers. Besides, in the present state of the world, it is practically impossible that writings which are read by the instructed can be kept from the uninstructed. If the teachers of mankind are to be cognizant of all that they ought to know, everything must be free to be written and published without restraint.

If, however, the mischievous operation of the absence of free discussion, when the received opinions are true, were confined to leaving men ignorant of the grounds of those opinions, it might be thought that this, if an intellectual, is no moral evil, and does not affect the worth of the opinions, regarded in their influence on the character. The fact, however, is, that not only the grounds of the opinion are forgotten in the absence of discussion, but too often the meaning of the opinion itself. The words which convey it cease to suggest ideas, or suggest only a small portion of those they were originally employed to communicate. Instead of a vivid conception and a living belief, there remain only a few phrases retained by rote; or, if any part, the shell and husk only of the meaning is retained, the finer essence being lost. The great chapter in human history which this fact occupies and fills, cannot be too earnestly studied and meditated on.

It is illustrated in the experience of almost all ethical doctrines and religious creeds. They are all full of meaning and vitality to those who originate them, and to the direct disciples of the originators. Their meaning continues to be felt in undiminished strength, and is perhaps brought out into even fuller consciousness, so long as the struggle lasts to give the doctrine or creed an ascendancy over other creeds. At last it either prevails, and becomes the general opinion, or its progress stops; it keeps possession of the ground it has gained, but ceases to spread further. When either of these results has become apparent, controversy on the subject flags, and graudally dies away. The doctrine has taken its place, if not as a received opinion, as one of the admitted sects or divisions of opinion: those who hold it have generally inherited, not adopted it; and conversion from one of these doctrines to another, being now an exceptional fact, occupies little place in the thoughts of their professors. Instead of being, as at first, constantly on the alert either to defend themselves against the world, or to bring the world over to them, they have subsided into acquiescence, and neither listen, when they can help it, to arguments against their creed, nor trouble dissentients (if there be such) with arguments in its favor. From this time may usually be dated the decline in the living power of the doctrine. We often hear the teachers of all creeds lamenting the difficulty of keeping up in the minds of believers a lively apprehension of the truth which they nominally recognize, so that it may penetrate the feelings, and acquire a real mastery over the conduct. No such difficulty is complained of while the creed is still fighting for its existence: even the weaker combatants then know and feel what they are fighting for, and the difference between it and other doctrines; and in that period of every creed's existence, not a few persons may be found, who have realized its fundamental principles in all the forms of thought, have weighed and considered them in all their important bearings, and have experienced the full effect on the character which belief in that creed ought to produce in a mind thoroughly imbued with it. But when it has come to be an hereditary creed, and to be received passively, not actively — when the mind is no longer compelled, in the same degree as at first, to exercise its vital powers on the questions which its belief presents to it — there is a progressive tendency to forget all of the belief except the formularies, or to give it a dull and torpid assent, as if accepting it on trust dispensed with the necessity of realizing it in consciousness, or testing it by personal experience, until it almost ceases to connect itself at all with the inner life of the human being. Then are seen the cases, so frequent in this age of the world as almost to form the majority, in which the creed remains, as it were, outside the mind, incrusting and petrifying it against all other influences addressed to the higher parts of our nature; manifesting its power by not suffering any fresh and living conviction to get in, but itself doing nothing for the mind or heart, except standing sentinel over them to keep them vacant.

To what an extent doctrines intrinsically fitted to make the deepest impression upon the mind may remain in it as dead beliefs, without being ever realized in the imagination, the feelings, or the understanding, is exemplified by the manner in which the majority of believers hold the doctrines of Christianity. By Christianity I here mean what is accounted such by all churches and sects — the maxims and precepts contained in the New Testament. These are considered sacred, and accepted as laws, by all professing Christians. Yet it is scarcely too much to say that not one Christian in a thousand guides or tests his individual conduct by reference to those laws. The standard to which he does refer it, is the custom of his nation, his class, or his religious profession. He has thus, on the one hand, a collection of ethical maxims, which he believes to have been vouchsafed to him by infallible wisdom as rules for his government; and on the other a set of everyday judgments and practices, which go a certain length with some of those maxims, not so great a length with others, stand in direct opposition to some, and are, on the whole, a compromise between the Christian creed and the interests and suggestions of worldly life. To the first of these standards he gives his homage; to the other his real allegiance. All Christians believe that the blessed are the poor and humble, and those who are ill-used by the world; that it is easier for a camel to pass through the eye of a needle than for a rich man to enter the kingdom of heaven; that they should judge not, lest they be judged; that they should swear not at all; that they should love their neighbor as themselves; that if one take their cloak, they should give him their coat also; that they should take no thought for the morrow; that if they would be perfect they should sell all that they have and give it to the poor. They are not insincere when they say that they believe these things. They do believe them, as people believe what they have always heard lauded and never discussed. But in the sense of that living belief which regulates conduct, they believe these doctrines just up to the point to which it is usual to act upon them. The doctrines in their integrity are serviceable to pelt adversaries with; and it is understood that they are to be put forward (when possible) as the reasons for whatever people do that they think laudable. But anyone who reminded them that the maxims require an infinity of things which they never even think of doing, would gain nothing but to be classed among those very unpopular characters who affect to be better than other people. The doctrines have no hold on ordinary believers — are not a power in their minds. They have an habitual respect for the sound of them, but no feeling which spreads from the words to the things signified, and forces the mind to take *them* in, and make them conform to the formula. Whenever conduct is concerned, they look round for Mr. A and B to direct them how far to go in obeying Christ.

Now we may be well assured that the case was not thus, but far otherwise, with the early Christians. Had it been thus, Christianity never would have expanded from an obscure sect of the despised Hebrews into the religion of the Roman Empire. When their enemies said, "See how these Christians love one another" (a remark not likely to be made by anybody now), they assuredly had a much livelier feeling of the meaning of their creed than they have ever had since. And to this cause, probably, it is chiefly owing that Christianity now makes so little progress in extending its domain, and after eighteen centuries is still nearly confined to Europeans and the descendants of Europeans. Even with the strictly religious, who are much in earnest about their doctrines, and attach a greater amount of meaning to many of them than people in general, it commonly happens that the part which is thus comparatively active in their minds is that which was made by Calvin, or Knox, or some such person much nearer in character to themselves. The sayings of Christ coexist passively in their minds, producing hardly any effect beyond what is caused by mere listening to words so amiable and bland. There are many reasons, doubtless, why doctrines which are the badge of a sect retain more of their vitality than those common to all recognized sects, and why more pains are taken by teachers to keep their meaning alive; but one reason certainly is, that the peculiar doctrines are more questioned, and have to be oftener defended against open gainsayers. Both teachers and learners go to sleep at their post, as soon as there is no enemy in the field.

The same thing holds true, generally speaking, of all traditional doctrines — those of prudence and knowledge of life, as well as of morals or religion. All languages and literatures are full of general observations on life, both as to what it is, and how to conduct oneself in it;

observations which everybody knows, which everybody repeats, or hears with acquiscence, which are received as truisms, yet of which most people first truly learn the meaning when experience, generally of a painful kind, has made it a reality to them. How often, when smarting under some unforeseen misfortune or disappointment, does a person call to mind some proverb or common saying, familiar to him all his life, the meaning of which, if he had ever before felt it as he does now, would have saved him from the calamity. There are indeed reasons for this, other than the absence of discussion; there are many truths of which the full meaning *cannot* be realized until personal experience has brought it home. But much more of the meaning even of these would have been understood, and what was understood would have been far more deeply impressed on the mind, if the man had been accustomed to hear it argued *pro* and *con* by people who did understand it. The fatal tendency of mankind to leave off thinking about a thing when it is no longer doubtful, is the cause of half their errors. A contemporary author has well spoken of "the deep slumber of a decided opinion."

But what (it may be asked), is the absence of unanimity an indispensable condition of true knowledge? Is it necessary that some part of mankind should persist in error to enable any to realise the truth? Does a belief cease to be real and vital as soon as it is generally received — and is a proposition never thoroughly understood and felt unless some doubt of it remains? As soon as mankind have unanimously accepted a truth, does the truth perish within them? The highest aim and best result of improved intelligence, it has hitherto been thought, is to unite mankind more and more in the acknowledgment of all important truths; and does the intelligence only last as long as it has not achieved its object? Do the fruits of conquest perish by the very completeness of the victory?

I affirm no such thing. As mankind improve, the number of doctrines which are no longer disputed or doubted will be constantly on the increase: and the well-being of mankind may almost be measured by the number and gravity of the truths which have reached the point of being uncontested. The cessation, on one question after another, of serious controversy, is one of the necessary incidents of the consolidation of opinion; a consolidation as salutary in the case of true opinions, as it is dangerous and noxious when the opinions are erroneous. But though this gradual narrowing of the bounds of diversity of opinion is necessary in both senses of the term, being at once inevitable and indispensable, we are not therefore obliged to conclude that all its consequences must be beneficial. The loss of so important an aid to the intelligent and living apprehension of a truth, as is afforded by the necessity of explaining it to, or defending it against, opponents, though not sufficient to outweigh, is no trifling drawback from, the benefit of its universal recognition. Where this advantage can no longer be had, I confess I should like to see the teachers of mankind endeavoring to provide a substitute for it; some contrivance for making the difficulties of the question as present to the learner's consciousness, as if they were pressed upon him by a dissentient champion, eager for his conversion.

But instead of seeking contrivances for this purpose, they have lost those they formerly had. The Socratic dialectics, so magnificently exemplified in the dialogues of Plato, were a contrivance of this description. They were essentially a negative discussion of the great questions of philosophy and life, directed with consummate skill to the purpose of convincing anyone who had merely adopted the commonplaces of received opinion that he did not understand the subject — that he as yet attached no definite meaning to the doctrines he professed; in order that, becoming aware of his ignorance, he might be put in the way to obtain a stable belief, resting on a clear apprehension both of the meaning of doctrines and of their evidence. The school disputations of the Middle Ages had a somewhat similar object. They were intended to make sure that the pupil understood his own opinion, and (by necessary correlation) the opinion opposed to it, and could enforce the grounds of the one and confute those of the other. These last-mentioned contests had indeed the incurable defect, that the premises appealed to were taken from authority, not from reason; and, as a discipline to the mind, they were in every respect inferior to the powerful dialectics which formed the intellects of the "Socratici viri"; but the modern mind owes far more to both than it is generally willing to admit, and the present modes of education contain nothing which in the smallest degree supplies the place either of the one or of the other. A person who derives all his instruction from teachers or books, even if he escape the besetting temptation of contenting himself with cram, is under no compulsion to hear both sides; accordingly it is far from a frequent accomplishment, even among thinkers, to know both sides; and the weakest part of what everybody says in defense of his opinion is what he intends as a reply to antagonists. It is the fashion of the present time to disparage negative logic — that which points out weaknesses in theory or errors in practice, without establishing positive truths. Such negative criticism would indeed be poor enough as an ultimate result; but as a means to attaining any positive knowledge or conviction worthy the name, it cannot be valued too highly; and until people are again systematically trained to it, there will be few great thinkers, and a low general average of intellect, in any but the mathematical and physical departments of speculation. On any other subject no one's opinions deserve the name of knowledge, except so far as he has either had forced upon him by others, or gone through of himself, the same mental process which would have been required of him in carrying on an active controversy with opponents. That, therefore, which when absent, it is so indispensable, but so difficult, to create, how worse than absurd it is to forego, when spontaneously offering itself! If there are any persons who contest a received opinion, or who will do so if law or opinion will let them, let us thank them for it, open our minds to listen to them, and rejoice that there is someone to do for us what we otherwise ought, if we have any regard for either the certainty or the vitality of our convictions, to do with much greater labor for ourselves.

It still remains to speak of one of the principal causes which make diversity of opinion advantageous, and will continue to do so until mankind shall have entered a stage of intellectual advancement which at present seems at an incalculable distance. We have hitherto considered only two possibilities: that the received opinion may be false, and some other opinion, consequently, true; or that, the received opinion being true, a conflict with the opposite error is essential to a clear apprehension and deep feeling of its truth. But there is a commoner case than either of these; when the conflicting doctrines, instead of being one true and the other false, share the truth between them; and the nonconforming opinion is needed to supply the remainder of the truth, of which the received doctrine embodies only a part. Popular opinions, on subjects not palpable to sense, are often true, but seldom or never the whole truth. They are a part of the truth; sometimes a greater, sometimes a smaller part, but exaggerated, distorted, and disjointed from the truths by which they ought to be accompanied and limited. Heretical opinions, on the other hand, are generally some of these suppressed neglected truths, bursting the bonds which kept them down, and either seeking reconciliation with the truth contained in the common opinion, or fronting it as enemies, and setting themselves up, with similar exclusiveness, as the whole truth. The latter case is hitherto the most frequent, as, in the human mind, one-sidedness has always been the rule, and many-sidedness the exception. Hence, even in revolutions of opinion, one part of the truth usually sets while another rises. Even progress, which ought to superadd, for the most part only substitutes, one partial and incomplete truth for another; improvement consisting chiefly in this, that the new fragment of truth is more wanted, more adapted to the needs of the time, than that which it displaces. Such being the partial character of prevailing opinions, even when resting on a true foundation, every opinion which embodies somewhat of the portion of truth which the common opinion omits, ought to be considered precious, with whatever amount of error and confusion that truth may be blended. No sober judge of human affairs will feel bound to be indignant because those who force on our notice truths which we should otherwise have overlooked, overlook some of those which we see. Rather, he will think that so long as popular truth is one-sided, it is more desirable than otherwise that unpopular truth should have one-sided assertors too; such being usually the most energetic, and the most likely to compel reluctant attention to the fragment of wisdom which they proclaim as if it were the whole.

Thus, in the eighteenth century, when nearly all the instructed, and all those of the uninstructed who were led by them, were lost in admiration of what is called civilization, and of the marvels of modern science, literature, and philosophy, and while greatly overrating the amount of unlikeness between the men of modern and those of ancient times, indulged the belief that the whole of the difference was in their own favor; with what a salutary shock did the paradoxes of Rousseau explode like bombshells in the midst, dislocating the compact mass of one-sided opinion, and forcing its elements to recombine in a better form and with additional ingredients. Not that the current opinions were on the whole farther from the truth than Rousseau's were; on the contrary, they were nearer to it; they contained more of positive truth, and very much less of error. Nevertheless there lay in Rousseau's doctrine, and has floated down the stream of opinion along with it, a considerable amount of exactly those truths which the popular opinion wanted; and these are the deposit which was left behind when the flood subsided. The superior worth of simplicity of life, the enervating and demoralizing effect of the trammels and hypocrisies of artificial society, are ideas which have never been entirely absent from cultivated minds since Rousseau wrote; and they will in time produce their due effect, though at present needing to be asserted as much as ever, and to be asserted by deeds, for words, on this subject, have nearly exhausted their power.

In politics, again, it is almost a commonplace, that a party of order or stability, and a party of progress or reform, are both necessary elements of a healthy state of political life; until the one or the other shall have so enlarged its mental grasp as to be a party equally of order and of progress, knowing and distinguishing what is fit to be preserved from what ought to be swept away. Each of these modes of thinking derives its utility from the deficiencies of the other; but it is in a great measure the opposition of the other that keeps each within the limits of reason and sanity. Unless opinions favorable to democracy and to aristocracy, to property and to equality, to coöperation and to competition, to luxury and to abstinence, to sociality and individuality, to liberty and discipline, and all the other standing antagonisms of practical life, are expressed with equal freedom, and enforced and defended with equal talent and energy, there is no chance of both elements obtaining their due; one scale is sure to go up, and the other down. Truth, in the great practical concerns of life, is so much a question of the reconciling and combining of opposites, that very few have minds sufficiently capacious and impartial to make the adjustment with an approach to correctness, and it has to be made by the rough process of a struggle between combatants fighting under hostile banners. On any of the great open questions just enumerated, if either of the two opinions has a better claim than the other, not merely to be tolerated, but to be encouraged and countenanced, it is the one which happens at the particular time and place to be in a minority. That is the opinion which, for the time being, represents the neglected interests, the side of human well-being which is in danger of obtaining less than its share. I am aware that there is not, in this country, any intolerance of differences of opinion on most of these topics. They are adduced to show, by admitted and multiplied examples, the universality of the fact, that only through a diversity of opinion is there, in the existing state of human intellect, a chance of fair play to all sides of the truth. When there are persons to be found who form an exception to the apparent unanimity of the world on any subject, even if the world is in the right, it is always probable that dissentients have something worth hearing to say for themselves, and that truth would lose something by their silence.

It may be objected, "But *some* received principles, especially on the highest and most vital subjects, are more than half-truths. The Christian morality, for instance, is the whole truth on that subject, and if anyone teaches a morality which varies from it, he is wholly in error." As this is of all cases the most important in practice, none can be fitter to test the general maxim. But before pronouncing what Christian morality is or is not, it would be desirable to decide what is meant by Christian morality. If it means the morality of the New Testament, I wonder that anyone who derives his knowledge of this from the book itself, can suppose that it was announced, or intended, as a complete doctrine of morals. The Gospel always refers to a preëxisting morality, and confines its precepts to the particulars in which that morality was to be corrected, or superseded by a wider and higher; expressing itself, moreover, in terms most general, often impossible to be interpreted literally, and possessing rather the impressiveness of poetry or eloquence than the precision of legislation. To extract from it a body of ethical doctrine, has never been possible without eking it out from the Old Testament, that is, from a system elaborate indeed, but in many respects barbarous, and intended only for a barbarous people. St. Paul, a declared enemy to this Judaical mode of interpreting the doctrine and filling up the scheme of his Master, equally assumes a preëxisting morality, namely that of the Greeks and Romans; and his advice to

Christians is in a great measure a system of accommodation to that; even to the extent of giving an apparent sanction to slavery. What is called Christian, but should rather be termed theological, morality, was not the work of Christ or the Apostles, but is of much later origin, having been gradually built up by the Catholic church of the first five centuries, and though not implicitly adopted by moderns and Protestants, has been much less modified by them than might have been expected. For the most part, indeed, they have contented themselves with cutting off the additions which had been made to it in the Middle Ages, each sect supplying the place by fresh additions, adapted to its own character and tendencies. That mankind owe a great debt to this morality, and to its early teachers, I should be the last person to deny; but I do not scruple to say of it that it is, in many important points, incomplete and one-sided, and that unless ideas and feelings, not sanctioned by it, had contributed to the formation of European life and character, human affairs would have been in a worse condition than they now are. Christian morality (so called) has all the characters of a reaction; it is, in great part, a protest against Paganism. Its ideal is negative rather than positive; passive rather than active; Innocence rather than Nobleness; Abstinence from Evil, rather than energetic Pursuit of Good; in its precepts (as has been well said) "thou shalt not" predominates unduly over "thou shalt." In its horror of sensuality, it made an idol of asceticism, which has been gradually compromised away into one of legality. It holds out the hope of heaven and the threat of hell, as the appointed and appropriate motives to a virtuous life: in this falling far below the best of the ancients, and doing what lies in it to give to human morality an essentially selfish character, by disconnecting each man's feelings of duty from the interests of his fellow creatures, except so far as a self-interested inducement is offered to him for consulting them. It is essentially a doctrine of passive obedience; it inculcates submission to all authorities found established; who indeed are not to be actively obeyed when they command what religion forbids, but who are not to be resisted, far less rebelled against, for any amount of wrong to ourselves. And while, in the morality of the best pagan nations, duty to the state holds even a disproportionate place, infringing on the just liberty of the individual; in purely Christian ethics, that grand department of duty is scarcely noticed or acknowledged. It is in the Koran, not the New Testament, that we read the maxim, "A ruler who appoints any man to an office, when there is in his dominions another man better qualified for it, sins against God and against the state." What little recognition the idea of obligation to the public obtains in modern morality is derived from Greek and Roman sources, not from Christian; as, even in the morality of private life, whatever exists of magnanimity, high-mindedness, personal dignity, even the sense of honor, is derived from the purely human, not the religious part of our education, and never could have grown out of a standard of ethics in which the only worth, professedly recognized, is that of obedience.

I am as far as anyone from pretending that these defects are necessarily inherent in the Christian ethics in every manner in which it can be conceived, or that the many requisites of a complete moral doctrine which it does not contain do not admit of being reconciled with it. Far less would I insinuate this of the doctrines and precepts of Christ himself. I believe that the sayings of Christ are all that I can see any evidence of their having been intended to be; that they are irreconcilable with nothing which a comprehensive morality requires; that everything which is excellent in ethics may be brought within them, with no greater violence to their language than has been done to it by all who have attempted to deduce from them any practical system of conduct whatever. But it is quite consistent with this to believe that they contain, and were meant to contain, only a part of the truth; that many essential elements of the highest morality are among the things which are not provided for, nor intended to be provided for, in the recorded deliverances of the Founder of Christianity, and which have been entirely thrown aside in the system of ethics erected on the basis of those deliverances by the Christian church. And this being so, I think it a great error to persist in attempting to find in the Christian doctrine that complete rule for our guidance which its author intended it to sanction and enforce, but only partially to provide. I believe, too, that this narrow theory is becoming a grave practical evil, detracting greatly from the moral training and instruction which so many well-meaning persons are now at length exerting themselves to promote. I much fear that by attempting to form the mind and feelings on an exclusively religious type, and discarding those secular standards (as for want of a better name they may be called) which heretofore coexisted with and supplemented the Christian ethics, receiving some of its spirit, and infusing into it some of theirs, there will result, and is even now resulting, a low, abject, servile type of character, which, submit itself as it may to what it deems the Supreme Will, is incapable of rising to or sympathizing in the conception of Supreme Goodness. I believe that other ethics than any which can be evolved from exclusively Christian sources, must exist side by side with Christian ethics to produce the moral regeneration of mankind; and that the Christian system is no exception to the rule, that in an imperfect state of the human mind the interests of truth require a diversity of opinions. It is not necessary that in ceasing to ignore the moral truths not contained in Christianity men should ignore any of those which it does contain. Such prejudice, or oversight, when it occurs, is altogether an evil; but it is one from which we cannot hope to be always exempt, and must be regarded as the price paid for an inestimable good. The exclusive pretension made by a part of the truth to be the whole, must and ought to be protested against; and if a reactionary impulse should make the protestors unjust in their turn, this one-sidedness, like the other, may be lamented, but must be tolerated. If Christians would teach infidels to be just to Christianity, they should themselves be just to infidelity. It can do truth no service to blink the fact, known to all who have the most ordinary acquaintance with literary history, that a large portion of the noblest and most valuable moral teaching has been the work, not only of men who did not know, but of men who knew and rejected, the Christian faith.

I do not pretend that the most unlimited use of the freedom of enunciating all possible opinions would put an end to the evils of religious or philosophical sectarianism. Every truth which men of narrow capacity are in earnest about, is sure to be asserted, inculcated, and in many ways even acted on, as if no other truth existed in the world, or at all events none that could limit or qualify the first. I acknowledge that the tendency of all opinions to become sectarian is not cured by the freest discussion, but is often heightened and exacerbated thereby; the truth which ought to have been, but was not, seen, being rejected all the more violently because proclaimed by persons regarded as opponents. But it is not on the impassioned partisan, it is on the calmer and more disinterested bystander, that this collision of opinions works its salutary effect. Not the violent conflict between parts of the truth, but the quiet suppression of half of it, is the formidable evil; there is always hope when people are forced to listen to both sides; it is when they attend only to one that errors harden into prejudices, and truth itself ceases to have the effect of truth, by being exaggerated into falsehood. And since there are few mental attributes more rare than that judicial faculty which can sit in intelligent judgment between two sides of a question, of which only one is represented by an advocate before it, truth has no chance but in proportion as every side of it, every opinion which embodies any fraction of the truth, not only finds advocates, but is so advocated as to be listened to.

We have now recognized the necessity to the mental well-being of mankind (on which all their other well-being depends) of freedom of opinion, and freedom of the expression of opinion, on four distinct grounds; which we will now briefly recapitulate.

First, if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility.

Secondly, though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied.

Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds. And not only this, but, fourthly, the meaning of the doctrine itself will be in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct: the dogma becoming a mere formal profession, inefficacious for good, but cumbering the ground, and preventing the growth of any real and heartfelt conviction, from reason or personal experience.

Before quitting the subject of freedom of opinion, it is fit to take some notice of those who say that the free expression of all opinions should be permitted, on condition that the manner be temperate, and do not pass the bounds of fair discussion. Much might be said on the impossibility of fixing where these supposed bounds are to be placed; for if the test be offense to those whose opinions are attacked, I think experience testifies that this offense is given whenever the attack is telling and powerful, and that every opponent who pushes them hard, and whom they find it difficult to answer, appears to them, if he shows any strong feeling on the subject, an intemperate opponent. But this, though an important consideration in a practical point of view, merges in a more fundamental objection. Undoubtedly the manner of asserting an opinion, even though it be a true one, may be very objectionable, and may justly incur severe censure. But the principal offenses of the kind are such as it is mostly impossible, unless by accidental self-betrayal, to bring home to conviction. The gravest of them is, to argue sophistically, to suppress facts or arguments, to misstate the elements of the case, or misrepresent the opposite opinion. But all this, even to the most aggravated degree, is so continually done in perfect good faith, by persons who are not considered, and in many other respects may not deserve to be considered, ignorant or incompetent, that it is rarely possible, on adequate grounds, conscientiously to stamp the misrepresentation as morally culpable; and still less could law presume to interfere with this kind of controversial misconduct. With regard to what is commonly meant by intemperate discussion, namely invective, sarcasm, personality, and the like, the denunciation of these weapons would deserve more sympathy if it were ever proposed to interdict them equally to both sides; but it is only desired to restrain the employment of them against the prevailing opinion: against the unprevailing they may not only be used without general disapproval, but will be likely to obtain for him who uses them the praise of honest zeal and righteous indignation. Yet whatever mischief arises from their use is greatest when they are employed against the comparatively defenseless; and whatever unfair advantage can be derived by any opinion from this mode of asserting it, accrues almost exclusively to received opinions. The worst offense of this kind which can be committed by a polemic is to stigmatize those who hold the contrary opinion as bad and immoral men. To calumny of this sort, those who hold any unpopular opinion are peculiarly exposed, because they are in general few and uninfluential, and nobody but themselves feels much interested in seeing justice done them; but this weapon is, from the nature of the case, denied to those who attack a prevailing opinion: they can neither use it with safety to themselves, nor, if they could, would it do anything but recoil on their own cause. In general, opinions contrary to those commonly received can only obtain a hearing by studied moderation of language, and the most cautious avoidance of unnecessary offense, from which they hardly ever deviate even in a slight degree without losing ground: while unmeasured vituperation employed on the side of the prevailing opinion really does deter people from professing contrary opinions, and from listening to those who profess them. For the interest, therefore, of truth and justice, it is far more important to restrain this employment of vituperative language than the other; and, for example, if it were necessary to choose, there would be much more need to discourage offensive attacks on infidelity than on religion. It is, however, obvious that law and authority have no business with restraining either, while opinion ought, in every instance, to determine its verdict by the circumstances of the individual case; condemning everyone, on whichever side of the argument he places himself, in whose mode of advocacy either want of candor, or malignity, bigotry, or intolerance of feeling manifest themselves; but not inferring these vices from the side which a person takes, though it be the contrary side of the question to our own; and giving merited honor to everyone, whatever opinion he may hold, who has calmness to see and honesty to state what his opponents and their opinions really are, exaggerating nothing to their discredit, keeping nothing back which tells, or can be supposed to tell, in their favor. This is the real morality of public discussion: and if often violated, I am happy to think that there are many controversialists who to a great extent observe it, and a still greater who conscientiously strive towards it.

2. THE CASE OF ABRAMS *V.* THE UNITED STATES[1]

Dissenting Opinion of Justice Oliver Wendell Holmes

I do not doubt for a moment that by the same reasoning that would justify punishing persuasion to murder, the United States constitutionally may punish speech that produces or is intended to produce a clear and imminent danger that it will bring about forthwith certain substantive evils that the United States constitutionally may seek to prevent. The power undoubtedly is greater in time of war than in time of peace because war opens dangers that do not exist at other times.

But as against dangers peculiar to war, as against others, the principle of the right to free speech is always the same. It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned. Congress certainly cannot forbid all effort to change the mind of the country. . . .

In this case sentences of twenty years' imprisonment have been imposed for the publishing of two leaflets that I believe the defendants had as much right to publish as the government has to publish the Constitution of the United States now vainly invoked by them. Even if I am technically wrong and enough can be squeezed from these poor and puny anonymities to turn the color of legal litmus paper; I will add, even if what I think the necessary intent were shown; the most nominal punishment seems to me all that possibly could be inflicted, unless the defendants are to be made to suffer not for what the indictment alleges but for the creed that they avow — a creed that I believe to be the creed of ignorance and immaturity when honestly held, as I see no reason to doubt that it was held here, but which, although made the subject of examination at the trial, no one has a right to consider in dealing with the charges before the Court.

Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart, you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole-heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas — that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system, I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country. I wholly disagree with the argument of the government that the first amendment left the common law as to seditious libel in force. History seems to me against the notion. I had conceived that the United States through many years had shown its repentance for the Sedition Act of 1798, by repaying fines that it imposed. Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command: "Congress shall make no law . . . abridging the freedom of speech." Of course I am speaking only of expressions of opinion and exhortations, which were all that were uttered here, but I regret that I cannot put into more impressive words my belief that in their conviction upon this indictment the defendants were deprived of their rights under the Constitution of the United States.

---

[1] Reported in 250 U. S. 616, 627–631, 1919.

3. THE CASE OF ROSIKA SCHWIMMER[1]

Dissenting Opinion of Justice Oliver Wendell Holmes

The applicant seems to be a woman of superior character and intelligence, obviously more than ordinarily desirable as a citizen of the United States. It is agreed that she is qualified for citizenship except so far as the views set forth in a statement of facts "may show that the applicant is not attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same, and except in so far as the same may show that she cannot take the oath of allegiance without a mental reservation."

The views referred to are an extreme opinion in favor of pacifism and a statement that she would not bear arms to defend the Constitution. So far as the adequacy of her oath is concerned I hardly can see how it is affected by the statement, inasmuch as she is a woman over fifty years of age, and would not be allowed to bear arms if she wanted to. And as to the opinion the whole examination of the applicant shows that she holds none of the now dreaded creeds but thoroughly believes in organized government and prefers that of the United States to any other in the world.

Surely it cannot show lack of attachment to the principles of the Constitution, that she thinks that it can be improved. I suppose that most intelligent people think that it might be. Her particular improvement looking to the abolition of war seems to me not materially different in its bearing on this case from a wish to establish cabinet government as in England, or a single house, or one term of seven years for the President; to touch a more burning question, only a judge mad with partisanship would exclude because the applicant thought that the eighteenth amendment should be repealed.

Of course the fear is that if a war came the applicant would exert activities such as were dealt with in Schenck *v.* United States, 249 U. S. 47. But that seems to me unfounded. Her position and motives are wholly different from those of Schenck. She is an optimist and states in strong and, I do not doubt, sincere words her belief that war will disappear and that the impending destiny of mankind is to unite in peaceful leagues.

---

[1] Reported in 272 U. S., 1929.

I do not share that optimism nor do I think that a philosophic view of the world would regard war as absurd. But most people who have known it regard it with horror, as a last resort, and even if not yet ready for cosmopolitan efforts, would welcome any practicable combinations that would increase the power on the side of peace.

The notion that the applicant's optimistic anticipations would make her a worse citizen is sufficiently answered by her examination, which seems to me a better argument for her admission than any that I can offer. Some of her answers might excite popular prejudice, but if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought — not free thought for those who agree with us but freedom for the thought that we hate. I think that we should adhere to that principle with regard to admission into, as well as to life within this country.

And recurring to the opinion that bars this applicant's way, I would suggest that the Quakers have done their share to make the country what it is, that many citizens agree with the applicant's belief, and that I had not supposed hitherto that we regretted our inability to expel them because they believe more than some of us do in the teachings of the Sermon on the Mount.

4. THE CASE OF MRS. DENNETT[1]

AN EDITORIAL IN THE NEW YORK *WORLD*

IN a Federal court in Brooklyn, Mrs. Mary Ware Dennett has been convicted of sending obscene matter through the mail. The matter in question consists of a pamphlet on sex written eleven years ago for the instruction of her two sons, then aged ten and fourteen. It is a small pamphlet, nineteen pages long, with a simplicity and directness about it which no one has questioned. It attempts to tell children what is worth knowing about sex, clearly and decently; and in a few paragraphs it disposes of whole volumes of rubbish that have harassed youth since prurient books on sexology began to make their appearance.

---

[1] Reprinted by permission from the New York *World* of April 25, 1929. It is to be noted that a reversal by a higher court of the decision in the Dennett case may possibly take place after this volume has been printed.

There are three facts of special interest in this case.

In the first place, Mrs. Dennett's pamphlet has been widely commended and widely used by various organizations whose ethical standards are beyond dispute. It has been published in the *Medical Review of Reviews*, indorsed by clergymen and writers, used in the Bronxville school system, and sent through the mails by health societies and religious societies over a period of ten years.

In the second place, not a word of evidence concerning this use of the pamphlet was permitted to reach the jury, Judge Burrows ruling that testimony along this line was immaterial and irrelevant, and the case being decided by having the pamphlet read aloud, for the purpose of deciding whether it offended "the common sense of decency and modesty of the community."

In the third place, it is quite evident that if this decision stands, then a formidable obstacle has been placed in the way of the education of youth in matters of sex, at a time when the desirability of such education is conceded by all enlightened people and has become, in fact, perhaps the first concern of all who have youth in their care. Mrs. Dennett, whose pamphlet has for ten years been put to use by such organizations as the Y.M.C.A., now faces a possible sentence of five years in jail.

It remains to be said that this indictment, of very great importance to the public, has taken place in the city of New York and not in a remote village in Tennessee; that the decision was reached in forty minutes; and that the jury consisted not of twelve "hill-billies" at whom it was great sport for metropolitan newspapers to sneer, but of twelve average citizens from the supposedly far more enlightened, tolerant, and progressive community of New York.

The case is deeply disturbing and deserves to be thought about, discussed, and understood, in so far as it can be, in relation to the questions of public policy which it raises.

5. STRIKE CASES[1]

REPORT OF THE CIVIL LIBERTIES UNION

FOUR strikes during 1928 raised many and varied issues of repression — the New Bedford and Fall River textile strikes, the soft coal strike in Pennsylvania and the Middle West, the strike of the left-wing women's garment workers in New York City, and the hosiery workers' strike at Kenosha, Wisconsin.

The New Bedford textile strike ran from April to October. Fall River was incidental — and only a few workers went out. The soft coal strike ran from early in the year to the fall. The New York garment strike ran a month only. The Kenosha strike is still going.

All of these strikes were marked by cases of assault by the police, hundreds of arrests of pickets, by many cases in court, and the coal and Kenosha strikes by injunctions. But in none of them were any strikers sent to prison for long terms or serious crimes. The longest sentence was for three months for violation of a Federal injunction in Ohio — and for two months in the case of an organizer in New Bedford.

The Union was not involved in the Kenosha strike, for the hosiery workers were able to handle their own defense work against the Federal injunction and the arrests of over seven hundred pickets. Nor were we involved in the New York garment workers' strike, save to protest to the police commissioner against the hundreds of unwarranted arrests of pickets. In the month the strike ran, 1,350 pickets were arrested, only five of whom had committed an offense justifying the courts in holding them for the grand jury. The great majority were discharged.

Our connection with the coal strike was chiefly in the cases arising in western Pennsylvania, northern West Virginia and eastern Ohio. The principal events are covered in the account of Pennsylvania cases. In Ohio we aided in the extraordinary case at St. Clairsville where fifty-one women, wives of arrested miners, were locked up when they went to visit their husbands in jail. They were charged with "riotous assemblage." Released on bail, they were told the charges would not be pressed if they stopped strike activities. The cases have since been dismissed. We endeavored without success to find a way to remove or impeach the prosecutor responsible for this outrage.

---

[1] Reprinted by permission from a report entitled *The fight for civil liberty; the story of the activities of the Civil Liberties Union*, *1928–29*, pages 11–14.

Our connection with the New Bedford and Fall River textile strikes was continuous, though the active defense work was handled by the attorneys for the two rival unions involved. Our part consisted in publicity, protests to police heads, and proceedings against lawless officials.

The trouble in New Bedford, which did not begin till the strike had run two months, was due chiefly to police efforts to stop mass picketing of the left-wing union. Some thirty thousand workers were on strike; thousands were on the picket lines. The mills were closed tight; no strike breakers were brought in, and no injunctions were sought. Somewhere around two thousand arrests were made, chiefly of the left-wing union. Eight hundred were convicted, and all of them appealed. Only fifty of the cases involved members of the American Federation of Labor union of the skilled workers. The arrests were not for picketing, which Massachusetts law permits, but for alleged offenses on the picket line. Mass picketing itself was held to be "disorderly conduct," then "parading without a permit," then "rioting." The authorities succeeded in stopping mass picketing, but picketing in small groups went on to the end of the strike, settled by a compromise effected by a "citizen's committee."

During the strike only a handful actually served sentences after conviction by juries in the superior court where they appealed from the lower court, which sits without jury. The superior court did not meet from early in the strike until after it was over. The strikers therefore got the benefit of delay while out on bail. When the superior court met in March, 1929, with some eight hundred cases on its docket, a settlement was effected by which the defendants were placed on probation for six months to a year without going to trial.

This settlement included also cases of "conspiracy to parade without a permit" brought after the strike was over against twenty-five of the leaders. The state was anxious to jail them, and even tried to extradite four from New York. Governor Roosevelt, after hearing, refused to honor the request for extradition, because of the flimsy nature of the cases and the delay in bringing them. The only case not dismissed is that of Albert Weisbord, who did not appear at the time of the settlement, and who was later arrested in Massachusetts. Pending also is our suit for damages against a police officer on behalf of a striker whom he beat.

The Union sent representatives several times to New Bedford to deal with the police, to help strengthen the defense, and to institute two cases against police officers charged with brutality. Jacob Minkin, New Bedford attorney, generously volunteered his services to us in civil liberties cases, and represented us in much of this work.

Over in Fall River, some ten miles from New Bedford, where the left-wing union sought to spread the strike, the police were far more hard-fisted. The Fall River workers had accepted the wage cut, the American Federation of Labor unions would not strike, and the police chief (under state, not local control as in New Bedford) felt he could afford to be rough. He at once prohibited all meetings in private halls. The Civil Liberties Union thereupon organized a test meeting on a vacant lot with the Rev. Smith O. Dexter of Massachusetts as a speaker with Albert Weisbord of the left-wing union. It went off successfully before an audience of one thousand.

In the face of police opposition, the left-wing union resorted to the purchase of the vacant lot, christening it "Liberty Lot," and proceeded to hold meetings. The police interfered, whereupon we sought relief by applying for an injunction to stop them. At hearings in Boston before the superior court, the injunction was denied, but the judge suggested remedies in criminal and civil suits for trespass. The police, however, shied at the court proceedings and stopped their interference with meetings. Picketing, however, was strictly prohibited, and as it was impossible to overcome the police prohibition, the strike, never really established, petered out.

One case of police beating in arresting a striker resulted in our filing a damage suit on his behalf. It is still pending.

We also had on our hands litigation growing out of the Colorado miners' strike which ended early in 1928. Jointly with the General Defense Committee of the I. W. W. we filed damage suits against the governor, state police officers, and officials of the Rocky Mountain Fuel

Company on behalf of the widows and children of the six miners shot to death on the picket line at the Columbine mine in November, 1927. The cases have not yet been heard.

In a case in the Federal court at Denver, where we won early in 1928 a decision setting aside the authority of the governor to declare a "state of insurrection," the state appealed; and we joined with the Colorado State Federation of Labor in an appeal for funds to finance the costs of our side of the case. When it came on for hearing before the circuit court of appeals, it was dismissed on the ground that the question had become moot. The original decision in favor of our contention therefore stands.

LXIX. THE FUTURE OF CAPITALISM AND SOCIALISM IN AMERICA[1]

A Symposium by

Sam A. Lewisohn
Vice President Miami Copper Company

Dr. Scott Nearing
Economist, The Rand School

Colonel M. C. Rorty
Vice President International Telephone and Telegraph Corporation

Morris Hillquit
Attorney; author

At least three attitudes toward the future of capitalism and socialism in America are gradually emerging in this country.

The first is that the newer capitalism is cleaning its own house, is solving its most pressing problems, and is developing a stability of structure, under a wiser leadership in industry, such as could scarcely have been anticipated in the days before the war.

The second attitude toward capitalism in this country is that of the communists who see America's growing economic imperialism leading to more and increasingly disastrous wars, and who maintain that, despite the new leadership in industry, the war of the classes in America — with the increasing concentration of industrial control — is becoming ever more clear-cut, and that the final demand of the workers for the socialization of industry will be inevitably opposed by the armed forces of the capitalist class, resulting in a devastating civil war.

A third attitude is that, while capitalism may be improving in a number of particulars, its improvement is, in considerable measure, brought about as a result of developments of a socialistic nature; that the increasing welfare of the masses is by no means commensurate with the increasing productivity of modern industry, and that industrial waste cannot be eliminated, equality of opportunity obtained, and war and the threat of war avoided until capitalism swings completely into a socialized society.

---

[1] Reprinted by permission from a pamphlet published by the League for Industrial Democracy.

In an attempt to have these varying points of view presented on the same platform, the League for Industrial Democracy selected for the subject of its Twenty-first Annual Dinner, held at the Fifth Avenue Restaurant, New York, on December 29, 1926, the subject, "The Future of Capitalism and Socialism in America," and was fortunate in securing for its speakers some of the foremost advocates of the positions described above. The speakers were Sam A. Lewisohn, New York banker, vice president of the Miami Copper Company, author of *The new leadership in industry*, and one of the newer group of industrial managers; Colonel M. C. Rorty, engineer and statistician, vice president of the International Telephone and Telegraph Corporation, and formerly president of the National Bureau of Economic Research; Dr. Scott Nearing, economist and well-known communist, author of *Dollar diplomacy* and numerous books on economic problems, and Morris Hillquit, author, attorney, and international secretary of the Socialist Party of America. Robert Morss Lovett, president of the L. I. D., an editor of the *New Republic*, and professor of English literature of the University of Chicago, acted as "impartial" chairman.

In contrasting the words "capitalism" and "socialism," the League is not unmindful of the fact that there cannot be a hundred per cent line of demarcation between any two industrial orders; that one order merges into another and that it is impossible to say on any one day where the old order ends and the new order begins.

Nevertheless there are certain differences between the social order known as "capitalism" and that known as "socialism." Capitalism is an industrial order under which the principal industries of the country are privately owned and administered with the primary aim of private profit. On the other hand, socialism aims at a social order under which the principal industries are owned socially — by the community and by voluntary coöperative groups, of producers and consumers — and operated democratically, with workers, consumers, and technicians adequately represented in industrial control.

In his address, Mr. Lewisohn, the first speaker, agreed in brief with the socialists that industry was in a constant state of flux, but maintained that the growth of an enlightened leadership was more important from the standpoint of social welfare than a change in social structure. He believed that more socially visioned leadership was in the making. Dr. Nearing considered leadership of secondary importance — the problem of leadership he regarded as a "constant" under various systems — and drew a dark picture of the future of capitalism in this country, particularly pointing out the dangers of our investment policy abroad. Colonel Rorty emphasized the new and stabilizing tendencies in capitalism, and, through the Socratic method, endeavored to demonstrate the extent to which socialists and upholders of capitalism might be included in a new school of "pragmatic socialism," while Mr. Hillquit, summing up in an eloquent address, pointed to the need, from the standpoint of democracy and of social justice, for a continued advance toward the socialist goal.

On account of the brief space of time at the disposal of the speakers — particularly of the last speakers — the following symposium can be regarded merely as suggestive, not as a final statement of any one point of view.

HARRY W. LAIDLER
Director

INTRODUCTION BY THE TOASTMASTER, ROBERT MORSS LOVETT

Ladies and gentlemen: The Committee has chosen a most important subject for discussion this evening, "The future of capitalism and socialism in America." I presume that they would have met our own feeling for emphasis if they had phrased it, "The future of America between capitalism and socialism."

You know the old moralities used to have by way of frontispiece a good young man, *obviously* a good young man, with his good angel on one side of him and his evil angel on the other, and a toss-up as to which would get him. Now that, I think, is the way in which some of us think of democratic America, as the good young man between capitalism and socialism, and in my capacity of arbitrary and impartial chairman, I am not going to say which is the good angel or which is the evil angel. I am not going to discuss the disillusionments that we have experienced with democracy. I merely want to point out that however much or little we may have of real democracy, that form of organization is now challenged, is now in competition with two much tighter, closer, more highly organized forms of dictatorship of capital and dictatorship of the proletariat. And any form of dictatorship has this advantage over democracy, that it can summon unlimited resources in the way of expert guidance and compel obedience, and can conscript the workers in the obedience to expert guidance.

What democratic organization will do in the face of this competition is a question which gives special significance to the discussion this evening.

MR. LEWISOHN ON THE NEW LEADERSHIP IN INDUSTRY

There is something about the topic of the evening, "The future of capitalism and socialism in America," which suggests that I may be expected to participate in a sort of crystal gazer's experience meeting. In that event, I am afraid I shall have to disappoint — I have left my gazing crystal at home.

I am not a prophet. I do not happen to be the seventh son of a seventh son, so I do not even know whether the economic society of the future will be capitalistic or socialistic.

According to the topic of the evening, both socialism and capitalism will have a future in this country. I am inclined to agree. I think they may have their futures simultaneously. And, if we are discussing economic systems, whether existing or proposed, we should not limit ourselves to two.

Society dynamic, not static

The difficulty is that, when we discuss capitalism and socialism, we are apt to find ourselves discussing definitions instead of realities. Somehow it has become fixed in our minds that even if we can't define them, capitalism is a definite thing and socialism is a definite thing and never the twain shall meet. The mere word "system" with which we label forms of society has the connotation of definiteness — of a blueprint.

Of course, what we call capitalism and socialism are not definite systems and they are meeting all the time. Economic society is not static — it is dynamic. Even in any one country it is never one thing at a given time and something else at another time, with a clear sharp break between them. Economic society never *is* anything; it is always in a process of becoming something else. Capitalism is becoming in some respects socialism under our very eyes, and in Russia socialism is becoming capitalism.

Whatever system we may theoretically have, it is always adapting itself to economic and human necessities, to changing pressures. Even if economic societies could be developed according to blueprints, they would always be changing to something else. Society is not a machine but a living organism made up of living beings. I shall therefore not attempt to prophesy what is going to happen, but rather *how* it is going to happen, or rather *how* it *may* happen. It seems to me that perhaps the more useful thing to do is to try to recognize certain tendencies and forces that give promise of making our economic life more socially acceptable and to suggest how they can be developed in the right direction.

Leadership the essential factor

In all this welter of apparently uncoördinated movement, what determines whither we shall go? To use a term from engineering, progress is the resultant of two forces acting on society at the same time. The two forces are constantly changing in magnitude and direction. Sometimes one is more effective than the other. Sometimes they act in opposite directions, sometimes together. These two forces are the leadership of the few and the inertia of the many.

One essential under any economic system — capitalism, state socialism, guild socialism, syndicalism, fascism, communism — is *leadership*. Not only leadership but economic administrative leadership. Not only political evangelism but wise and effective executive direction.

Leadership, as I see it, has a dual nature. At any given moment, in any society, some sort of leadership of routine affairs is essential in order to make it function with any effectiveness at all. But there is another side to leadership, the directive as well as the administrative. The right leadership carries society forward to better forms of organization. Aside from those opportunists moved by purely selfish considerations, the difference between those who favor the development of capitalism and others who favor more radical changes is essentially a difference of method. Some stress mass movement and artificial changes in structure; some stress leadership.

No doubt some here this evening believe that, in order to change society for the better, we must change the system entirely from one definite system to another definite system — and, preferably, as quickly as possible. Others of us feel that, though changes in structure and a new balance of forces may be useful, they are rather superficial as compared with such things as education and leadership. We feel that, *if the make-up of the leadership is improved, society will change itself for the better without any sudden, clearly defined change in system.*

The basis of our life and progress is energy founded on egotism. Nature has endowed us with egotism, which is not in the nature of "original sin." It is not of itself wicked. It depends on whether it is used in its raw state or adapted to social purposes. There are those who feel that a change can be made in the way that human energy is used by a radical change in institutions. They feel that somehow such a change will transform the egotism into altruism. They suggest that new blueprints to provide new incentives and create checks and balances will put in positions of leadership those who will be interested in the good of all, that the new structure will provide the type of incentives that will make for a healthier social life that will eliminate from society, for good and all, those who have narrow and selfish purposes.

Even though they recognize the problem as a behavior problem, they feel that, by changing the balance of forces, a different behavior will automatically take place. Let me illustrate my point for a moment in terms of the experiments in behavior psychology. You remember in Dr. Watson's experiments how the mice were made to pass through various mazes and go through various motions in order to get a piece of cheese. The maze might be compared with what we call an economic system, and motions with economic and social behavior, while the cheese is the incentive. By changing the maze and forcing the mice to train themselves to get to the cheese or starve, the mice were taught new methods of behavior.

It seems to me that those who believe that we must change our economic system believe that these methods can be applied to economic and industrial life. They believe that you can take our individualistic and egotistic reflexes and condition them socialistically. They believe that if the incentive to work and to live is set in a different place, the entire behavior of men, like that of mice, can be changed.

Now there is some doubt, to put it mildly, whether this sort of method can be used successfully as a wholesale means of educating and changing society. As a matter of fact, something like these behavioristic experiments have been tried out in varying degrees in some places. In some countries we have extreme communism — in some countries hundred per cent unionism. But the economic results have not been entirely acceptable. Have they? That is one of the reasons why some of us feel that in any attempt to improve our social economic life, emphasis can well be placed in other directions than upon structure.

We recognize that the structure in which the individual plays his part will necessarily affect his behavior, but we feel that the training the individual human beings that make up economic society receive is even more important.

This is particularly true of the training of the energetic individual who often becomes the future leader. Attention can well be focused there. If his training is changed, he will be more apt gradually to make modification in structure which will create a healthier social environment.

The problem is to make sure that proper training is given to those energetic ones who are likely to become the more influential forces in the economic and social structure, so that their potential crude selfish energy will be transformed into energy for broader social purposes.

If we could make sure that each year every energetic member of society could be trained to have a broader social outlook than the energetic ones that preceded him — and remember they would not be necessarily his parents (for in this country influence is not necessarily hereditary); if such a broader outlook could be implanted, we could be confident that the present economic blueprint could be utilized for broader social purposes and then would gradually be altered in accordance with such purposes. We would thus have the changes in structure come about organically rather than artificially.

I don't want what I am saying to suggest a sentimental gesture. I don't want to suggest that altruism is suddenly to become the motivating force of our business life — that our "go-getters" are suddenly to become economic saints. But as a background of what I have to say, I do want to suggest that the basis of our active human life is the energy of egotism and that this can be socialized into a force for a better society.

Pressure of groups necessary

It is true we cannot rely entirely upon training to make our energetic ones (intent upon their own purposes or upon results) voluntarily pay attention to the welfare of subordinates or those coöperating with them. Pressure of groups is obviously necessary to bring about changes. A certain amount of unionism, a certain amount of legislation, is absolutely necessary under our present economic order to prevent the abuse on the part of managers. But in attempting to prevent abuse, we must be careful not to produce paralysis.

We cannot safely rely on changes in structure alone. By merely changing institutions without educating a new type of leader you may merely substitute one kind of abuse for another, one kind of exploitation for another kind. To be concrete, if you substitute state socialism for private capitalism suddenly you may be substituting *political exploitation* for *financial exploitation.* In any event, in so far as the change of structure is to be relied upon to change the behavior of our economic hierarchy, it must be such as to retain and utilize their ability. It is economic suicide to substitute a structure that will "strait-jacket" ability.

I think that we are all agreed that an industrial society is the only one possible for us with our present population and our present demands, and it is difficult to see how we can have an industrial society without industrial leadership — whether we have any form of so-called "industrial democracy" or not. This is not the place to discuss how far we can apply democratic principles to factory operations. Certain democratic principles can and must, I believe, be harmonized with the needs of efficiency in the economic field.

We see this in management, in union coöperation, and in the shop committee movement. But I believe, as Beatrice Webb has said, that the needs of efficiency are such that it is very unlikely that we can have subordinates democratically running administrative systems. Without competent direction it is impossible to produce the good things of life. I cannot emphasize this too strongly. For those who are not in the thick of industry it is difficult to realize what a difference able or incompetent management makes in the economic success or economic failure of any industry. Whatever production this country has is due to the ability and ingenuity of management that there has been all the way down the line.

Two types of leadership

By one type of leadership I mean the natural expression of technical proficiency as it is utilized in the machinery of production. By the other type of leadership is meant the natural expression of a forward-looking socialized attitude.

I cannot see any reason why the two types should not exist in the same individual.

And I feel that to the extent we can train our future industrial leaders to combine these two types of leadership, to that extent will we be able to make leadership successful — effective both mechanically and socially. I am not pleading for a new aristocracy, but for a new leadership — a conscious leadership, a tolerant leadership, a trained leadership. I would therefore turn aside from any attempt to depend upon changes in social structure or social pressures to the study of what can be accomplished with the training, early or late, of our leaders in business, in finance, in production, in marketing. It is important to ascertain the principles that must be observed if economic leadership is to be effective.

One can already discern in the younger groups that are filling positions in our financial life as well as in the ranks of production executives a more scientific professional point of view.

In the financial world there are many men interested not only in the interests of a banking class, a credit class, a business class, but interested in creating successful economic processes generally. They see the economic world as a dynamic cycle of events in which they will play the interesting rôle of a constructive leader. They are as much interested in creating a stable financial system as our city engineers are in creating a safe water system. They are just as constructively minded as any leaders might be in some system where private profit was not involved.

Democratic type of managers developing

Turning aside from the financial world to the manufacturing world, we find some at least of its leaders having an entirely professional point of view in their rôles of managers or executives. In the world of industry we find production executives with a scientific constructive point of view that is dramatically different from the old narrow enterpriser. They realize that an autocratic Russian conception of industrial processes is not sufficient. They recognize that they must take into account the present insistence on the recognition of the self-respect of the individual and that they must harmonize the principles of efficiency and democracy. They have seen that consultation with those employed is not only compatible with efficiency in the broader sense of that term but may accelerate such efficiency. They realize that the greatest misery in our economic world after all has been caused not so much by abuse as by stupidity and a limited intellectual and emotional environment.

Where are the new leaders of the future to be found? Napoleon said that there was a marshal's baton in every private's knapsack. But did Napoleon conquer Europe by having his army sit down and wait until marshal's batons appeared by magic? I shall not talk about America being the land of opportunity. I am not going to tell you how this steel king began life as a furnace-stoker at seventy-five cents a week or how this railroad magnate got his start selling papers between stations. But we must note that a great deal of leadership comes up from the ranks and that economic power in this country is not necessarily hereditary. It is a commonplace that many of our leaders, from foreman to corporation president, come up from obscurity. Particularly in the future the poor boy is as likely to become an influential participant in the economic world as the poor little rich boy. If his training in social economics is neglected he can, if anything, be more of an obstacle, more resistive to economic and social improvement, than the one who started with so-called advantages.

I do not quite agree with Edgar Lee Masters who said in *Spoon River anthology*, "Beware of the man who arises to power from one suspender." But if we wish to rid ourselves of the autocratic spirit, we must educate the man who comes up from the ranks in proper methods of leadership, just as much as the graduates of the universities.

Training in technical schools and associations

Therefore, aside from the problem of college and the university, a certain amount of training should be given in high schools and primary schools that will train a more constructive go-getter of the future. The training of this group into a more socialized point of view towards society is in a way more perplexing than the training of the group that come from colleges and professional schools. Many of you who are interested in an improved environment have no doubt given much thought to training of the future citizen in socialized habits of thinking. Just as an illustration, perhaps fanciful, of the sort of thing that might be done: We formerly had experiments in so-called "self-government" which consisted of miniature governmental systems, such as legislatures and parliaments. Perhaps we could have miniature factory organizations in our schools, in which children and young boys could be taught the principles of liberal executive direction.

When the more energetic, starting at the bottom, came up through the ranks, they would not have the traditional attitude of the hard-boiled boss. The foreman or superintendent of the future would not necessarily be a bullying foreman or autocratic superintendent. The president that came from the ranks would have instilled in him certain ideals of leadership.

The problem in our higher institutions should be simpler. Already from our business schools there are being graduated every day men with a broader professional spirit.

Also, a slight modification of the training in engineering schools is only needed to transfer their fine professional outlook into a broader conception of the human forces that they have to deal with. Our business management and engineering societies and associations are serving as extramural extension courses in more humanized and in more scientific management and production methods. Anyone interested in the management field can testify to the great advance that has already taken place in many quarters from centralized employment (taking the hiring and firing from foreman) to business stabilization with its effect upon the security of the workman. These are, then, some of the educational forces that hold promise of turning out more socialized energy. Of course the greater insight psychology and mental hygiene are giving us each year will no doubt have an enormous influence in helping us socialize human behavior. But there is no time in twenty minutes to explore these possibilities.

Well, some of you may wonder why in the world I have not mentioned the education of union leaders. Surely the training of this type of leadership is as important a step in bringing about a better economic order as the training of employers, bankers, and other business leaders. Surely this is a type of energy which should also be socialized. The reason I have not mentioned this branch of leadership training is not because of any lack of appreciation of its importance. Such colleges as Brookwood are most important institutions. Already in certain fields brilliant union leaders have shown that they can play a prominent part in helping to think through the problems of particular industries. I have not mentioned this field because there has already been wide discussion of the necessity of this type of education. But they are not the only type of leaders having to do with labor that need education.

Production executives need it just as much — the proper training of potential employers from childhood up should mean much for the improvement of the future social order. Of course I have confined myself to the economic field. A similar attempt to socialize the future has been taking place in the training of young men in the political and the international field.

Distribution of ownership

Now aside from these hopeful tendencies in the emergence upon the scene of a more socialized leadership, there have been certain changes in structure (in what I have called the blueprint) that have been the most interesting economic phenomena of our present century. The wider economic ownership has been so generally discussed that I will just touch on it. Perhaps Mr. Rorty will discuss it further. I think it is too early and rather flamboyant to talk about the democratization of capital. But the wider distribution of securities is a hopeful phenomenon, for if democratization of industry and finance is to come, this is the soundest way it could come.

I have said the needs of efficiency probably make it unwise to have subordinates democratically running administrative systems. It is much better that these subordinates be indirectly the bosses of others through stock ownership. The development up-to-date in wider stock ownership is a long way from this ideal. But it may yet be approximated. In any event, as Mr. Eustace Seligman, Professor Ripley and others have mentioned, its success will depend on the restraint which business leaders show in their relation to it — and in its sensible and discreet regulation. It holds vital hope of the future, for it includes both the possibility of the wider distribution of economic status and the wider distribution of economic goods.

I have no time to discuss the problem of the distribution of national income, but, as Mr. J. A. Hobson has said, production is the great problem today. Analysis has demonstrated that the large problem from the point of view of individual well-being is the total national production. Distribution — I refer to the distribution of income, not to marketing — is most important as it accelerates or hinders that production.

As I explained from the start, I have purposely avoided discussing the pros and cons of the profit system or any other system, but have rather dwelt on the leadership which we must develop under any system. There are of course great abuses in distribution to iron out. If we can tune up our national factory under competent and socialized leadership, perhaps the problem will be negligible in the year 2026.

Already real wages have never been higher; hours have never been lower. With invention and science the sky is the limit if we can hold down the birth rate. But here again I am venturing into prophecy.

I hesitate to play the rôle of Pollyanna, even as to a century hence, but I suppose a utopia within the realm of possibilities would be an ownership of our industrial resources in the hands of the great mass of citizens, including of course the employees — though ownership and employment would not by any means necessarily coincide — and so high a standard of living that people would be able to become interested in other things than economic goods: justice, opportunity, security, leisure, and life for all.

Scott Nearing on the Class Conflict

Until the Civil War there was a competitive capitalist system in the United States. From the organization of the Standard Oil Company in 1870 down to about the period of the organization of the United States Steel Corporation, 1901, we passed through a period of trust organization. From about the beginning of the present century we have been in a period of bank control, finance control. The problem of leadership, as the previous speaker has suggested, was approximately the same in each of those three periods. The periods were essentially different in their character, as well as the type of people produced therein.

In other words, in the last hundred years of American economic history, we have gone through three very definite epochal changes — from competition to monopoly, to finance control. I regard the problem of leadership, which the previous speaker has suggested, as an essentially secondary or subordinate problem in any consideration of the position or future of capitalism and socialism in the United States. I regard the process which I have just characterized, the process of economic and social evolution, as much more basic than the functioning of any particular individual, any particular leader, and I therefore address myself to the process rather than to the leadership, because I believe, as the previous speaker has said, that the problem of leadership is a social constant. It existed in Julius Caesar's day, it existed in the day of Cardinal Richelieu, it exists in the day of Henry Ford and Andrew Mellon. Julius Caesar lived in a slave society; Richelieu lived in a feudalist one, we live in a capitalist one.

The United States is one sector of an economic process. It happens that there are peculiar problems and relationships in this sector, but the general problem of capitalism is the same here as it is in Japan or as it was in Great Britain, except that the stages of development in these various countries differ, and, in the imperial struggle of which the United States is a part, one unit, one entity, one sector, one empire is out on top, and that empire happens to be the United States.

At the present time the volume of American wealth, income, and surplus is equal to the wealth, income, and surplus of Britain, Germany, France, Italy, Japan, and Belgium. In other words, the United States, economically speaking, holds a position of vast ascendancy over the other competitors in capitalist and imperialist struggle. So, by a series of events which I shall not attempt to describe, the United States has emerged as the dominant empire in this imperialist epoch, just as Rome emerged in the imperial epoch that began about A.D. 70. With this emergence, the ruling class of the United States has become not only the ruling class of the United States, but *the ruling class of the ruling class of the world*. That is, the United States is the leader in the struggle for the right to exploit the planet, both from the point of view of physical resources and from the point of view of labor.

Concentration of control

Let me just examine for a moment what the implications of this position are. The American ruling class, which resolves itself into a few thousand bankers and industrial leaders on the inside and a larger group on the periphery, owns all the essential economic machinery of the country, except the post office and the rivers and harbors and a few minor factors of that type. All of the essential minerals, fuels, transport, manufacturing, mining, and merchandising enterprises are privately owned by private capital in the United States. Not only are these economic positions practically all held by private capital, but the newspapers are a part of the big business system. The radio and the movie, the newspapers and magazines, are a part of the big business system. The schools and colleges are directed by boards consisting of the same men who direct banks, railroads, and other business enterprises, and the sources of the funds for the construction of the cathedral up here on the hill give you some idea of the way the churches go about raising their money.

In other words, if you examine the economic and social machinery of the United States today, you will find that it is centralized in the hands of a comparatively small ruling group which is politically unified, is unified vertically in manufacturers' associations and other types of vertical associations, and horizontally in Rotary Clubs, chambers of commerce, boards of trade, and other similar groups that bring together men and women — men primarily — in the various branches of economic endeavor. There is thus built up in the United States one of the most powerful economic machines with its social implications that the modern capitalist world has ever seen — not only powerful because it controls the wealth but because it controls the political machinery as well. Out of this situation come certain problems — a few very rich people and a great number of people very much poorer. In New York we have eighteen thousand policemen to keep those two groups in order, to keep the poor from plundering the rich and to enable the rich to go on plundering the poor.

This group of owners in the United States owns the jobs of thirty odd millions of people who must go to this little group in order to find an opportunity to earn a livelihood. Out of this relation between job owner and job taker arises the inevitable struggle on the part of the job owner to exploit, to gain the greatest possible advantage.

A glance at the present economic history of Great Britain will indicate the direction in which this juxtaposition of forces leads. It leads toward civil war. And if Mr. Lewisohn was multiplied a hundred thousand times he might defer it, delay it, but he could not prevent the coming of that civil war. The civil war may take a non-military form, it may take a violent form. I am not prepared to say which. I am simply pointing out the fact that, when one group of people, small in number, owns the jobs on which the masses of people must work in order to live, there has resulted civil war and it will result again unless some untoward events intervene. So that as I look forward to the future of capitalism in the United States, I see it under the necessity of putting the lid on a little tighter all the time. The necessity is not very great at present, and so no Benito Mussolini is needed here right now, but, as the future grows more critical, the necessity of enforcing sedition acts and criminal syndicalism laws and the like will grow sharper. These laws are already on the statute books, and they will be invoked.

In other words, the employing class in the United States has all of the power, economic and social, and all of the machinery necessary to knock down all heads that rise in revolt against the present economic system. And I have not the least doubt that it will live up to its reputation of the last ten years and knock them down when they show up. If it doesn't, its failure so to do will involve, as I say, an historic anomaly.

Our imperialist policy

The second point. Between 1848, when we stole the Southwest from Mexico, and 1898, when we stole Cuba, Porto Rico, and the Philippines from Spain, we did not take anything from anybody, because at that particular time we did not need any territory. In 1903 we took Panama from Colombia. Since 1904 we have been in Cuba six times with our army. We have got an army in Nicaragua at the present moment telling the Nicaraguans on which territory they may fight and on which territory no fighting can take place.

Our school textbooks describe Cuba, Haiti, the Philippines, and one or two of the others as protectorates of the United States. Under the domination of the democratic champion of small nations, Woodrow Wilson, and under the domination of Harding and Coolidge, the process of gobbling up the Caribbean area has gone steadily forward. There is no indication of any cessation. On the contrary, we have four and one-half billions invested, and the number of marines and battleships in the area necessarily increases.

The process is familiar. Whenever a great ruling class rises to power, its exploitation produces a class struggle. Whenever a great ruling class needs extra territory for exploitation, it goes out and takes it, as we are now taking territory in Cuba, Panama, Nicaragua, and so on, and I imagine we will go on taking what we want when we want it in the immediate neighborhood of the United States. If anybody does not like it, he can look down the barrel of a sixteen-inch gun and see what is there.

That is what our navy programme, this new cruiser programme, is about. We need battleships to protect Standard Oil and Bethlehem Steel and American Sugar and other investors in the Caribbean and the South American areas. And I imagine this process of stealing territory from our neighbors will go steadily forward as the imperial class needs more and more territory to exploit.

Third, between 1915 and 1922 the United States took the world into its confidence to the tune of about twenty-two thousand million dollars. Some of it we loaned governmentally; some of it we loaned privately. When the war was over and the settlements were begun in 1922, sixteen European countries — practically all the important ones — owed money to the United States. Japan does, Australia does, Canada owes us three billions. The whole world is paying us tribute.

In some cases, notably the European countries, this tribute is such that the countries are practically unable to swing it in their budgets. That is, the United States has become the rich nation of the world, and the other nations are the poor, and because we are rich we are able to collect tribute from them on account of their poverty.

Anti-American coalition?

This process is producing at the present time a line-up of the European states against the United States, and the question now is whether Britain will go into the European line-up or whether she will stand up and fight it out alone. I don't know what the British ruling class will do. Obviously their economic interests lead them into a coalition against the rich country of the world.

If history means anything, it means that the other countries of the world, when one country becomes inordinately and indecently rich, will unite and take the wealth away from the indecently rich country, particularly when the indecently rich country is exacting tribute from all the poorer countries.

I can imagine, therefore, that our new cruiser programme is very necessary in that direction also, because there will be a fight between the United States of Europe and the United States of America when the former repudiate, which is the only thing they can do. There will be a fight because we have got interests of such nature and volume that have to be protected. They are running up beyond the twelve billion mark at the present time. We are heading now straight toward that conflict because American capitalism is inordinately and indecently rich and because the rest of the capitalist countries are forced into the position of tribute payers to that one capitalist country.

As I look at the developments in the last twenty-five years, particularly in the United States, I see (1) an internal situation arising which is becoming intolerable to the masses of exploited workers, not to the select few; I see (2) the United States ruthlessly overriding the rights of her neighbors and gradually swallowing them up as they become necessary to her economic development; and I see (3) the world uniting against the United States as the only means of saving itself from this economic octopus. I don't say, mind you, that they will be able to do it that way. I think another war will bring ruin after it, just as the last one did, but that did not prevent the last one, and obviously it won't prevent the next one. So I see capitalism in the United States facing civil war, a class war, facing the necessity for enlarging its imperial power in the Caribbean area and elsewhere and facing the necessity of arming and preparing itself to meet the rest of the capitalist world.

No clear class line-up in America

How about socialism in the United States? Of course, at the present time, there is not any. We need not kid ourselves about that. There is no socialism here, for example, in this crowd. This crowd has just eaten a $2.50 dinner. I don't know how many meals you had before that today, but enough, don't you know. There is no class struggle in this crowd. There is no sharp class struggle anywhere in the United States at the moment. But if we look at the situation in Europe, I think we shall gain some idea of the future of socialism in the United States.

I noted what Mr. Lewisohn said about the Russian situation. He said that the economic developments in Russia were not entirely successful. I wonder if he thinks the economic developments in Great Britain are successful. I wonder if he thinks economic life in Britain has been one glad sweet song since 1920. I am not prepared to argue that the economic situation in Russia is entirely successful. I am not convinced it is entirely successful in the United States.

What I see in the United States on the side of labor is the effort on the part of a great many workers to share in the plunder of the capitalists. At the present time we have a number of labor banks that have gone into the banking business. I think they control about one per cent of the total bank resources of the country, or something like that. They are going to buy out the capitalist banks sooner or later — sooner, according to some of the more optimistic of their promoters. I notice certain workers are buying stock in the American Telephone and Telegraph and United States Steel. I understand to date they have almost two per cent of the stock in these companies, and they are proposing to put aside their pennies and match the capitalist dollars and buy out the American Telephone and Telegraph and the Pennsylvania Railroad and other institutions.

I see that William Green of the American Federation of Labor said that it is the business of labor and capital to get together. I am sure every capitalist will feel cordially appreciative of that sentiment on the part of President Green, because, as long as the capitalist controls all the machinery of society and can keep close to the workers, he will know what the workers are doing, and occasionally he can get some worker like Farrington to develop still closer relationships. A. A. Purcell made a very telling remark after he got back from the United States. Purcell said, "In England we like to get as far as we can from the bosses. In the United States the workers seem to feel the closer they get to the bosses, the better off they are." That at least is the case with the cult among the brotherhood of railway men at the present time. Get in with the bosses and share the plunder of the capitalist system.

Now, I am not prepared to argue this question tonight. I want to throw it out as a fourth tendency that is going on in the United States. It is a tendency to strengthen the capitalist system. Every purchase of stock by a worker, every organization of a labor bank by labor, every scheme that is accepted for class collaboration strengthens the capitalist system, because it increases the number of people who believe that the old machine can be put back on its feet and made to serve a useful purpose a little longer.

The coming expropriation

As I see the mass of labor in the United States, there is 87 per cent that is not now organized. The problem of socialism in the future is going to revolve about the attitude of that group of unorganized labor. And the question as to what those unorganized workers do is going to be determined by what the chamber of commerce does. I think the chamber of commerce has no choice in the matter. I don't think they can choose but fight another world war. I don't think they can choose but stimulate revolution in the Caribbean countries. I don't think they can choose but exploit the American workers beyond the limits. I am not accusing them of sinister motives. I don't think they have any choice.

When the mass of American workers elect their representatives to the state legislature and to Congress and say to the chamber of commerce, "Gentlemen, we have 51 per cent of the votes in the United States; we are going to expropriate the railroads and steel mills and other big business enterprises and give you an opportunity to take a job along with the other workers"; if the chamber of commerce replies, "Certainly, gentlemen, come in and help yourselves," there will be no more trouble. The properties will be expropriated and the chambers of commerce will be replaced by the organized workers' movement.

However, the experience of Europe in the last ten years does not show that this outcome is probable. What happened in Europe during the last ten years was that wherever there was a threat to the established order, a dictator was put in, preferably a man who had had his training in the labor movement. Many of the dictators in Europe at the present time got their training in the labor movement some way or another.

They know the game. They are much more useful at that game than other people who did not get that training.

Whether Mussolini or Pilsudski or the King of Belgium or some other dictator was put up or whether the Postmaster General in England was made dictator on the thirtieth of April of this year, the fact remains that, when the property of the landlords and capitalists of European countries was threatened, without a single exception they threw the law and constitution to the winds and resorted to naked force to hold what they called their property rights.

I believe the masses of people in the United States — not the engineers, because they are capitalists; not the amalgamated socialists in Chicago and New York — they are rapidly becoming capitalists; not the workers going in for class collaboration — they are siding with the capitalists — but the unorganized masses of the workers, who have nothing to lose, run up against a severe war or a severe economic depression as they are up against it in Great Britain now, or up against any other severe crisis, economic or social, they will be compelled as a matter of self-protection to take over the economic and political machinery of society. They won't pay for it. They won't take it by voting for it, but they will take it by assuming possession of it and operating it in their own interests. At that stage the leaders will be developed out of this mass movement.

In the meantime, before it takes place — and I don't believe it is particularly near in the United States — the real fight is going to be made by those people who carry on what in Russia for fifty or sixty years was an ideological revolutionary movement to see the issues clearly and expand them in a clear-cut and emphatic manner. That is, I believe the United States, socially speaking, is going to follow the Russian precedent. In Russia there was one class and no opposition. In the United States there is one class and no opposition. The ruling class in Russia happened to be an agricultural class. In the United States it happens to be a capitalist class. Economically it is different. Socially the same situation exists — one class in unchallenged control with arbitrary power. Whenever that situation has existed historically one result has followed. This class has put on the screws until the machine would not work any longer, until the lid blew off. And I look forward in the United States confidently to seeing the lid blown off by the masses of unorganized workers, just as the lid was blown off in Russia by the masses of unorganized workers and farmers.

I believe capitalism has got to face civil war at home. I believe American capitalism is going to gobble its neighbors one by one as fast as it needs them, ruthlessly and without excuse.

I believe that the world is going to unite against the United States, repudiate its debts, and challenge the Americans to go out and collect them, and when they go out and try to collect they will have the biggest cleaning-up task on their hands that they have ever faced. If you belong with the bondholders and stockholders, you had better chip in some money to build that new battle cruiser fleet. If you belong with the people who look forward to a new social order, you had better take off your coat, roll up your sleeves, and go to work.

Colonel M. C. Rorty on "Pragmatic Socialism"

First of all I shall attempt to define what I shall designate as "pragmatic socialism." I imagine that we can all agree that socialism is a philosophy of human organization which aims at the attainment of human happiness. But this is not the whole of the definition. It is a very difficult thing to prove that the highest degree of human happiness may not be found among those benighted and simple-minded heathen who are well supplied with coconut palms and banana trees, even if they are quite ignorant of Ford cars and radio sets. Nevertheless, I am quite certain that no true socialist thinks of the ultimate working out of his philosophy in terms of a world of blissful morons dreaming each day of the ripe bananas of tomorrow. So, as a matter either of faith or of reasoned conviction, we must add to our definition the idea of economic, scientific, and intellectual progress. Furthermore, since we are talking of socialism, rather than of communism, we must recognize the several institutions of private and public property, and of individual and collective capital and enterprise, as elements which, in varying degrees, shall contribute to the structure of the socialist state. And, finally, we will agree that this socialistic organization, in so far as it may be new to human experience, should be developed only as rapidly as human nature permits sound advances to be made.

Here, then, we have the full definition. Pragmatic socialism is that philosophy of human organization which seeks to promote the happiness, and the intellectual, scientific, and economic advancement, of a community as a whole, by utilizing the institutions of private and public property, and of individual and collective capital and enterprise in the most effective manner permitted at any given time by the existing character and capacity of the population involved.

Now, by this Socratic process, I have proved that all of us here are pragmatic socialists — including Mr. Lewisohn. But my definition is something more than a mere piece of verbal trickery — it has been developed with the definite purpose of emphasizing the fact that the elements of agreement between progressive capitalists and practical socialists are much greater than the elements of difference. Furthermore, on close examination, this agreement will be found to extend far beyond a mere statement of ultimate objects, to include a great number of basic premises, not only in the field of pure economics, but in the field which relates to human instincts and human conduct.

The profit motive in future industry

To begin with the most fundamental difference of all — that which relates to the so-called "profit motive" in our social and economic organization — our pragmatic socialists are quite certain to agree, in the end, that our future social and economic organization should be governed by self-interest, provided only that this self-interest is adequately enlightened, and they will be inclined to grant very full play to the profit motive in all those many fields of human enterprise where it adds to the progress of society as a whole much more than it takes in individual gains.

As a further step it is highly probable that our coalition group of socialists will agree that the profit motive, or at least the acid test of profits, must have its place even in the vast majority of those enterprises which are developed under collective rather than individual control. The reason for this conclusion will be a simple one. If collective enterprise is applied in a widening field and steps outside of those primary limits within which complete or partial support by taxation is justified, even the pure socialist will agree that the proper test of the efficiency of such enterprises, and of their right to receive new money for purposes of expansion, will be their ability to produce services or commodities which are worth more in the public markets than their cost of production.

Need of profits for extensions

Also, as a practical matter, the socialistic state would need such profits in order to permit it to make the necessary annual extensions to, and improvements in, the social machinery, without resorting to burdensome direct taxation; in fact, not even the rashest tax expert would undertake to raise by added taxation the ten billions of dollars per annum that might readily be required for such increases in the social capital. These sums are now furnished almost wholly through the reinvestment of interest, dividends, and business profits, and, if the socialized state of the future should absorb great industries, it must of necessity require such enterprises, as a group, to supply the funds required for their own proper growth.

Supplementing this agreement as to the necessity for applying the the market test of economic efficiency to practically all socialized enterprises, our pragmatic socialists will agree without difficulty that every socialized enterprise of a commercial type shall stand firmly on its own bottom, and *shall be organized substantially in corporate form as a separate "authority."* For this procedure we have so definite a trend of recent precedents, both in the United States and in Europe, that little argument will be necessary. A significant recent example in the United States is the creation of the Port of New York Authority as a joint agency of the states of New York and New Jersey. This is not wholly the commercialized type, but approaches it.

A further agreement, based on elementary banking and financial principles, will be that these commercialized "authorities" shall not, under any circumstances, have their security issues guaranteed by the political units which create them. It will also be agreed that they shall not be exempt from taxation, or, in other words, shall not be subsidized by having the state furnish them with police protection and other governmental services without cost. And a final agreement will quite probably be that private investors, who may furnish portions of the funds required for the operations of these "authorities," shall have at least a strong minority representation on their boards of directors.

Our semi-commercial industries

With this agreement once reached as to the strictly commercialized "authorities," it may be assumed that our pragmatic socialists will agree also upon the development of certain important semi-commercial "authorities" to which public subsidies may be granted in definite and very strictly limited form. Typical examples of such semi-commercial "authorities" might be those which would concern themselves with the water supply and the transportation subways of New York City.

In connection with both of these services, it would not take long for our pragmatic socialists to arrive at a reasonable and workable decision as to the extent to which subsidies should be granted out of general taxation and by tax exemptions, as well as through special temporary tax levies on areas immediately benefited by subway extensions. And, having reached these primary decisions, they would agree that water rates and subway fares should thereafter be varied promptly and automatically to meet the requirements of interest and sinking fund payments and operating costs.

At this stage in the development of our socialist state the discussion may turn from questions of fundamental structure to questions of detailed adjustment to the frailties of human nature.

I can conceive that it will be agreed, at an early point in this supplemental discussion that the ordinary citizen should have the same right of appeal from the acts and the rules and decisions of the socialized "authorities" that he should have with respect to private enterprises. And, in reaching this agreement, I suspect that even the least pragmatic socialist will have, in the back of his mind, the rankling memory of the helpless rage he has felt on one or more occasions when he has run foul of the calm and insolent omnipotence of some minor bureau clerk in a public office.

The next point to be discussed may be that of the so-called "right to strike." Here I can foresee a hot argument — which will end, however, in an appreciation of the fact that the right to strike is no more a "right" than the old right of private vengeance that gave way to the code of the duello. So I shall expect, at no distant date, to see a definite code established for the industrial duello, in which one of the first articles will provide that any strike shall be outlawed unless it can be affirmatively shown that the employer, whether public or private, has an effective monopoly of employment in the locality concerned, and, as the result of such monopoly, is taking advantage of his employees by paying less than a market wage, or is otherwise offering inferior working conditions. Beyond this point it will be recognized that agreements to pay more than a market wage, or to offer superior working conditions, as the reward for superior productivity must be arrived at by processes of absolutely free negotiation (largely individual rather than collective) without threats or fear of coercion by either party to the discussion. Furthermore, I can foresee an absolute agreement to *outlaw any attempt to exercise political pressure upon wage disputes;* although in the opposite direction I can see conditions arising under which the ordinary citizen might have the right of appeal to judicial decision in cases where it appeared that wage agreements had been entered into which unjustly increased his cost of living.

Labor's participation in management

With disposal once made of the knotty problem of wages, I can imagine what the net argument might be with respect to the participation of labor in the management of industry. Here the progressive capitalist will argue that, in well-managed industry today, every worker who has the qualities of intelligence and character to qualify him for the exercise of authority over others is sooner or later promoted to a definite position in the managing group itself. And he and the practical socialist may agree to define their problem by asking what share in management should be given to workers who are inexperienced, or ignorant, or irresponsible, or who, if experienced, intelligent, and reliable, still lack the qualities of poise and judgment necessary for the exercise of authority. When the question is so put I suspect that both parties to our discussion will finally agree that authority in management must rest, as it does today, primarily with those skilled and experienced officers and workers who necessarily assume the responsibility for operating results, and secondarily with those who take the financial risks, whether they be private investors or the public as a whole.

Nevertheless, I conceive that they will agree, also, that, up to the point of weakening necessary discipline, *the ordinary workers should have power to check any abuses of authority.* And if our pragmatic socialists philosophize a bit at this point, they will not be disturbed by the vagueness of their answer to the problem, but will recognize that they are dealing with one of those eternal compromises — fixed in their essentials, but continually changing in details — out of which our whole social structure is, and must be, built. It seems certain, in any case, that they will recognize that fundamental kink in human nature which makes it *impracticable for men to elect those in immediate authority over them*, but requires that election shall work from the bottom to the top of the organization, and that authority in turn shall proceed from the top to the bottom.

Appointment v. *election of officials*

I suspect that, in our political as well as in our industrial organizations, in spite of some recent trends to the contrary, we shall gradually come back to the idea of electing a small number of men, and of giving these men the power to appoint the majority of working officials. This procedure has fundamental advantages which should not be sacrificed to any temporary expediency. Good men will accept positions in which their duties are primarily to appoint working officials, when they could not accept direct election to such working offices; and even a group of demagogues, when given the appointing power, will be apt to make good selections. In fact, the demagogue, since he, better than anyone else, knows the tricks of his own trade, may be trusted not to appoint demagogues to office.

Now, with the preceding points settled definitely or by working compromises, I can imagine that our pragmatic socialists will enter into a very fundamental discussion as to the extent to which the more capable members of society shall be called upon to support those who are less capable, although still fundamentally able-bodied and able-minded.

I assume that they will first clear their thinking by agreeing that our future society must begin by protecting itself against excessive population and against the importation, or the breeding at home, of fundamentally inferior masses of humanity, or of groups which, although not fundamentally inferior, are nevertheless fundamentally discordant with and unassimilable into our existing population. To that extent, at least, our society must be nationalistic in spirit, if only to enable it to develop a helpful model for the benefit of the world at large.

With agreement reached on this point, I suspect that the arbiters of our destinies will agree further that even our present society has already reached, or is rapidly reaching, the stage where the essentials of simple, but decent, living can be supplied to every able-bodied and able-minded worker out of his own productivity, without requiring the more capable to contribute from their surplus.

At this point I can see our consultants beginning to talk of the race, rather than of the individual alone. They may think in simple biological terms. They may remember that in their own gardens they do not regret when an individual stalk of corn grows sturdy at the expense of its neighbors, but even pull up the weaker stalks to make still more room for the strong. And I suspect that, without carrying these biological parallels too far, they will nevertheless be somewhat tough-minded on this particular question. They will agree that each new generation should be given the fullest of economic and educational opportunities. They will wish to see each man receive a full and just return for his own productivity. But they will not be willing to risk weakening the fiber of the race by allowing the less capable members of the older generations to ride, or to think that they should ride, on the backs of the more capable.

Social insurance legislation

The preceding decisions will very directly affect the point of view toward peace-time taxation and toward proposals for various forms of social insurance. An agreement that the individual worker *should* pay for the bulk of social insurance will help toward the recognition of the fact that, in the long run, either he, or some fellow worker, *does*, and *must*, pay for the bulk of it in higher prices or in reduced wages. So each proposal for social insurance will be subjected to rigid tests, without any illusions that something can be made out of nothing. Workmen's compensation plans on the whole have stood these tests; and here the direct loading of the cost, through the employer, upon prices is correct in principle and has the special advantage of affording a direct incentive toward the reduction of industrial hazards. But, on the other hand, much foreign practice with respect to unemployment and other social insurance will appear to our arbiters to be quite as destructive in character as our workmen's compensation plans have been constructive.

Capitalism more socialistic, socialism more capitalistic

At this stage in their discussions, I suspect that our pragmatic socialists will hold final council with themselves and will agree to become wholly pragmatic. They will find that they differ very little as to the ultimate objects to be attained or even as to the basic facts in human nature upon which their procedure should be established. They will discover that even the fullest practicable development of socialized "authorities," to replace our present large-scale privately owned utilites and industries, would not effect interest and dividend payments amounting to more than, perhaps, 10 per cent of our national income; and of this amount they will find that nearly the whole would be required, as it is today, for plant extensions. And they will discover, also, that the gains in real wages since the war, under our present economic system, have been far in excess of any gains to workers that could result from a mere shift in the ownership of capital, unaccompanied by the increase in efficiency which has marked our recent industrial progress.

So I suspect that our pragmatic socialists will cease to talk in terms of capitalism and socialism and will talk in terms of a scientific political economy, in which capitalism will steadily become more socialistic and socialism will steadily become more capitalistic. And they will, I think, agree that post-war developments in industry and commerce in the United States represent what is in effect an entirely new economic system, to the promise and practical results of which all abstract theories, for the time being, must yield place.

This, at least, is my own conclusion. I find that thoughtful workers and thoughtful managers, alike, are half hoping, half wondering, whether here in the United States, in these present days, the industrial revolution, after running its course for a hundred and fifty years in blindness, ignorance, and misunderstandings, may not be coming at last to its sane and orderly fulfillment.

To this end there are many factors which are contributing — the Federal Reserve Banking System, the high and constantly increasing efficiency of our systems of transportation and communication, the rapid development of electric power, the growth of a tested science of management, the work of the Department of Commerce in simplifying and standardizing many products and trade practices, and the extensive work of research done by an increasing number of our larger industrial organizations.

But back of all these factors lies a more fundamental thing, which is the development in the United States of a group of men who combine sound economic knowledge with the practical viewpoint, and in many cases, with power of position in a manner that is unique in the world's experience. In this connection, if time permitted, I should like to say something of the work of the National Bureau of Economic Research, with which Mr. Laidler and myself are both associated, which has brought many such men of widely varying viewpoints into practical coöperation for economic fact-finding.

All these elements of progress are supplemented by the marked development of better understandings between employers and workers. As a very genial and human old lawyer one time said to me, "When I can do a good deed, and at the same time make a profit, all my functions work in harmony." And the outstanding fact of the moment, in our economic affairs, is the discovery by managers and workers that they can do the good deeds of paying high wages and rendering a high productivity, and at the same time make a very handsome mutual profit.

Are we approaching a more orderly system?

No one will deny that many of our corporations have much progress to make before they can fairly claim that they are rendering that full measure of public service which an enlightened self-interest would justify; nor will anyone claim that our socialistic friends have not a wide field for their efforts in the improvement of our governmental units to the point where they may be justified in undertaking new responsibilities in the fields of public service and industry. Yet both corporations and governmental units are making steady progress, and my own belief — to conclude — is that the future of capitalism and socialism in the United States will be found in the parallel development and improvement of these two primary elements in our social structure — in giving both a fair field and no favor. And as time goes on and successive readjustments take place, I am convinced that the capitalists will say that we are living in a capitalistic state, and the socialists will say that we are living in a socialistic state — and both will be right, and I hope that both will be satisfied.

Morris Hillquit on the Coming of Socialism

If there ever was an instance of gross class collaboration we have seen it today when two capitalists and one communist have conspired to filibuster and take away the time of the only socialist. I had originally preserved for myself my usual rule of compromising between the complacent, optimistic capitalist and the prophetic, revolutionary, gloomy communist, but I see the last preceding speaker has taken the wind out of my sails. He has given you the well-known conventional movie ending of mutual happy marriage and bliss forever — the simple process of the reconciliation of capitalism and socialism by capitalism surrendering to socialism on condition that socialism first surrender to capitalism.

The lines of the discussion tonight have been somewhat blurred. Mr. Lewisohn opened it up by stating that, after all, the line of demarcation between capitalism and socialism is not very definite and, of course, it is true that nothing in any term or any definition is absolute.

Mr. Rorty has gone a step forward and has for the purpose created a pragmatic socialism unknown to any of us, a sort of an addition to our party without any initiation fee, and has given it a programme which he asks us to swallow. It is a very convenient one which can be swallowed by any Socialist Party, by any Anti-Socialist Party, by any church, by Mussolini, and that is that socialism stands for some sort of philosophy which contemplates human happiness, and scientific, spiritual, and economic advancement, whatever that may be.

Now, it is not all so very simple. While the line of demarcation between the two systems under discussion may not be very definite in all points, they are substantially sufficiently well defined. When we talk about capitalism we mean the present order of things, based primarily upon the conception of the industrial process as a private enterprise, conducted by private concerns for private profit, with all the implications, social, political, cultural, and intellectual that inevitably flow from such a system. And when we speak of socialism we have in mind an order of society based upon the industrial process as a social function, conducted by social agencies, primarily for the interests of the community as a whole, with all the implications, social, political, cultural, and intellectual that flow from that. And no matter how conciliatory Mr. Rorty may be, and personally he is very conciliatory and very amiable, *he cannot wipe out this fundamental distinction, this test whether the industries, the vital industries of the country, the activities upon which the life of the community depends, the activities which provide the individual in the community with food, clothing, and the necessaries of life, are conducted as individual enterprises for private profit or are conducted by the community in an organized, ordered fashion for the benefit of the community as a whole.* These distinctions exist, and the question before us is, Whither does America tend? Toward capitalism — or rather toward a continuation of the capitalist régime — or toward socialism?

A capitalist's paradise

I will say from the outset, I am no more a prophet than either Mr. Nearing or Mr. Rorty. I am not a prophet and I have no guarantees to offer. I even suspect, notwithstanding the great emphasis of my friend, Scott Nearing, that he has no confidence that things will develop just exactly as he describes them. I can well understand the attitude of some of the enlightened supporters of the existing system in the sincere belief that that system has come to stay forever. You see, the United States of late years had become the object of universal admiration and envy. We excel every country in the world in political stability, in our economic prosperity, and in the contentment of our population. Our wealthy classes are benevolent as well as powerful, the directors of tremendous industries, and, as Mr. Nearing quite correctly remarked, they dominate the finances and the markets of the world. They are the molders of public opinion and our governmental policies, they provide all the culture there is in the United States, the arts and sciences, they watch over our morals and religion, they take care of our poor and unfortunate, they are model citizens, they are model business men, they are model employers. People come from all over the world to learn their methods. And then we have a mass of workers, well paid, well fed, well treated, well contented; they are church members, they vote the Democratic or Republican ticket; they are fully satisfied with the existing order of things; they hate not only bolshevism and communism, but socialism and anything that smacks of an "ism." They are perfectly respectable, reliable citizens.

Now, this seems to be a sort of a capitalist's paradise, a system which has reached approximate perfection, and quite naturally the supporters of the system are absolutely convinced that, perhaps, with a few minor improvements, they have solved the problem forever; the system will continue forever. But that seems to be, nevertheless, a one-sided view. You see, there are several things to be considered in connection with it.

In the first place we mentioned the capitalists, we mentioned a certain class of the workers, not all of the workers. That, you know, is newspaper talk — I mean that the workers of the United States are all well fed, well clothed, are paid excellent wages, and so on. There are strata of the American working population who are just as badly off as the fellow workers in Europe, and some worse off — the aged, the invalided (and don't forget our intense industrial processes eat up a worker in a very short space of time), the unemployed. You know, we still have slums; we still have poverty; we still expend millions of dollars in an attempt to alleviate extreme poverty, and we do not succeed.

We have, as Mr. Nearing said, the unorganized workers who do not share in the general capitalist prosperity as much as do the organized workers, the privileged part of the working class. Then we have our farmers. That is a large portion of our population, and they are not always happy or always contented. It depends entirely upon the crop and upon the price they can get for the crop, and, once in a while, and pretty often, they get hard hit, their mortgages are closed, and they go into bankruptcy, and they constitute a discontented mass.

Will that condition continue forever? That is the question. Will even the better situated, the well-fed workers tolerate the condition forever? You see, after all, the wealthy are few in number. The large mass of the people, even excluding the better situated workers, are practically excluded from all advantages of modern life. They have no share in the direction of the affairs of the country, political, social, cultural, or otherwise. Everything that makes life worth living to you moderns, the things of culture and beauty, the things of creative endeavor, of aesthetic enjoyment are not for them. They are an inferior order of existence, well fed, but nevertheless dependent, nevertheless inferior. Can you imagine a human race, and the American specimen of it as well, that will continue satisfied in such a condition of humiliating inferiority and dependence forever? I cannot. And can you think of any palliative, of any improvement upon the present system which will make that system palatable to them forever? Again, I cannot. I have listened with great interest and attention to the measures of improvement proposed by both, or envisaged by both Mr. Lewisohn and Colonel Rorty. They failed to convince me.

Efficiency the modern god

There was the first one upon which particularly Mr. Lewisohn seems to lay stress — greater efficiency in industry. Greater efficiency in industry means the production of a greater quantity of commodities within a given time, and of the same quality, by better processes, by better organization; better work accomplished in other lines of endeavor, better service rendered. All these things do not go to the heart of the matter. Efficiency has become the modern god of the capitalist class. It is the great bourgeois god with a time clock instead of a soul, with a cash register instead of a heart, and I suspect this god is a humbug through and through. Because, after all, what is efficiency? What is true efficiency in a social sense? Our furniture factories in Grand Rapids today produce the products by the thousands and thousands as compared with the single pieces that were produced centuries ago, before the introduction of machinery and scientific methods. I wonder whether Mr. Lewisohn does not prefer a chair about two or three hundred years old made by the very inefficient mechanic to the modern Grand Rapids chair.

I have seen a forty-story building erected before my office window in the course of about three or four months. It is a great, towering, gigantic, ugly structure of steel and brick. It is the product of modern efficiency in building. Yet I read in the newspapers that one of our paragons of efficiency, a millionaire, brings over to the United States from some village in Italy an ancient castle stone by stone to put it up right here.

That has to do with efficiency in the product. How about the efficiency in process? Only a short time ago I was privileged to visit and examine one of the Ford plants in Detroit. It was a tractor plant. If you want the last word in efficiency, there it was. I saw the thing assembled, consisting of three hundred odd parts, three hundred odd workers in a shift standing in a row. There were some overhead trolleys carrying to them the different parts, and as they come each one takes his part and puts it on rapidly from time to time until the entire machine is built before your eyes in the course of a few moments. The gasoline is put into it, the breath of life blown into, and it goes away.

I looked at the men. There were about seventy thousand of them, most of them foreigners, I believe, from the Balkan countries. And I want to assure you not one of them wore a human countenance. They were strained. They were tired. They were not human beings. That is precisely what modern efficiency means in production at the present time. I don't think efficiency will make the present system palatable or enduring.

Training of leadership v. *training of all*

And then another thing Mr. Lewisohn proposes is the development of proper leadership. A different leadership from the present one, a broad-minded leadership. But it still must be a leadership. It must be an industrial élite, and there should be special training for such leadership, and I ask you whether the present system does, whether it ever can rest on leadership in the sense of the intellectual expert, or the expert in knowledge. The very essence of the modern system — the ownership of the capital through corporate organization by persons who have nothing in common with the processes of production, by stockholders and bondholders who may be as intelligent leaders as Mr. Ford or Mr. Rhinelander or anybody else — that, as I see it, excludes leadership as a remedy. Leadership through special training of engineers — how many great and powerful minds are possibly killed today, destroyed in the mines, in the mills, in the factories, for lack of a chance of development?

You speak of the training of leadership. Oh, no, it is not training of leadership that we need! We need training of the entire working population to the utmost, to such an extent that the working class as such will be trained to leadership of the industry and will be capable of conducting all industries for the benefit of the whole class of workers and the whole country.

Another one of the well-known remedies or compromises which are pointed to is diffusion of stock ownership. Why, the number of security owners, stockholders, bondholders, is growing every day. I don't know how many there are. You, here, are a better situated class. But there are others besides you. I know them and I tell you of them in confidence. I know of forty thousand cloak workers in this city; not one of them is a stockholder or a bondholder in any corporation. I know of millions of workers in the United States who are not and never can be stockholders or bondholders, for the simple reason that the wage is insufficient to afford them an ordinary living.

If we ever envisage a general distribution of the stock among all employees, among the consuming public at the same time, to the extent that each corporation will become a coöperative enterprise, oh, then you have solved the problem undoubtedly. But this is not the object of the present new method of distributing stock among employees. The object is to set apart one-half of one per cent, one per cent, or, if a corporation is particularly generous, two or three per cent of a certain preferred non-voting, meaningless stock to those stockholders in order to keep them tied to the machine; in order to make them believe that they have an interest in the plant. That cannot and will not work forever. That will not change the system.

Workers will demand a democracy

I believe, without attempting to prophesy, that when the present wave of sudden unexpected prosperity coming on top of a calamitous time of universal insecurity and poverty, when this period passes, when conditions begin to assume a normal character, when Europe will recover to a point that America will no longer have the monopoly of markets and the monopoly of prosperity, then the large masses of the people of the United States will wake up to the social differences in this country. They will demand a change. They will not be satisfied with this beneficent capitalism which keeps them in well-fed bondage. They will demand a change in government. They will demand a democracy which means the real actual choice and maintenance of the government by the intelligent consent of the masses. They will demand democracy in industry, not this silly idea of industry operated either by competent managers or by the enormous mass, collectively, voting for every process in the industry, but an organized industrial process operating as a social function for the benefit of the whole community. They will demand cultural democracy — a throwing wide open of the portals of education and enlightenment; they will demand social democracy and equal opportunity in all the joys of life for every man and woman.

I say, of course, this is no more than a prediction. It is a prediction based upon my conception of human character and just upon the points Mr. Lewisohn stressed, the acquisitiveness, the selfishness of men, which means their desire to get the best they can obtain. I repeat, this is no certain prophecy. Other things may happen. The thing Mr. Nearing has predicted may come to pass, or another great world war may engulf us all in the darkness of primitive barbarism, or a fascist dictatorship may arise all over the world and grip the United States as well. I mean, theoretically, anything is possible, but the main point is, that all that is immaterial. We are not concerned with prophecies. Prophecies are interesting; they are unreliable, as the course of the last fifteen years particularly has shown. We are not concerned with prophecy. We are concerned with this question: Assuming that there is a possibility of this country of ours degenerating into a mild despotism, and assuming, on the other hand, that there is a possibility of its evolving into an enlightened democracy; from every point of view, what will it depend on? It will depend but upon one thing: the enlightened conscious will of the great masses of the majority of the people of this country. If the people of this country are trained to desire, to demand, to strive for, better social conditions, a higher social order, they will get it. If they remain indifferent and phlegmatic, everything may be inflicted upon them and they will stand it.

Consequently, then, the job of every one of us is to choose which form of development he prefers and, having made his choice, contribute the best that is in him to that particular line of popular education.

It is not a question of prediction. It is not a question of fatalism. It is a question of conscious direction of the popular mind, and that is precisely what the Socialist Party is envisaging. That is the gospel of socialism. That is the hope of socialism.

LXX. SOME PROBLEMS OF TODAY

1. CONSUMERS' COÖPERATION[1]

BY HAROLD J. LASKI

It is not likely, in so complex a world as ours, that any single form of social organization represents the ultimate way of life that we require. It is, indeed, certain that a purely acquisitive society, such as that which emerged from the industrial revolution, is merely the presage of disaster. To trust to individual self-interest as the mainspring of social effort is not merely to postpone, but actually to defeat, the prospect of a common good. Yet when we come to the consideration of other possibilities, wisdom consists not in the search for a panacea, but in the discovery of methods of organization which adapt the service we require through means most likely to secure the maximum of social benefit in the result.

It is probable that the future historian of the nineteenth century will regard the consumers' coöperative movement as one of the vital experiments in an age of superlative achievement. Like many great social discoveries, its essence was essentially simple. Cheated by the truck system, the Rochdale Pioneers united to purchase for themselves the goods they required, and they eliminated profit from their adventure by returning the surplus which remained after costs had been met in proportion to the sums expended by each member upon the commodities available. From those humble beginnings, consumers' coöperation has grown to the position of one of the three outstanding movements in the working-class life of Great Britain. In the area it covers, the multiplicity of needs it satisfies, the standards it maintains, it has preserved an atmosphere that has something of heroic quality about it. The service it has commanded has been amazing in its devotion. Like a nation, it has had its outstanding pioneers; like a church, it has had its saints. No one today is entitled to discuss the future of democratic institutions without seeking to measure the part the coöperative movement may play in their growth and enrichment.

---

[1] Reprinted from a pamphlet entitled *The recovery of citizenship*, 1923, pages 12–26, by the permission of the author and Ernest Benn, Ltd., publisher.

The theory of coöperation is essentially simple. It is based upon the assumption that consumers need not wait upon the producer for response to their needs, but can organize that response for themselves. Thereby they eliminate the factor of profit, since the charges they make for the services involved need only cover the cost of production. From that perception has grown a movement so multifarious in character that its mere description would involve a formidable treatise. What is integral to its understanding is the fact that nothing is gained at any point by inadequacy of service. Since the consumer is, so to say, the producer, the better the quality of his product the greater the satisfaction he attains. Since he has no profits to pay, the surplus which remains returns to him in whatever shape he may desire. Since he has to determine what is to be produced, he is compelled to scrutinize his wants and the degree to which he satisfies them is dependent upon the quality of his own intelligence. So regarded, the process of consumption is an educational one. It trains the participant not only in the art of satisfying himself, but in those various aspects of government upon which the character of citizenship depends. He is driven by the process he is inaugurating to think out every side of the factors of demand and supply. He is trained in the conduct of business enterprise. He learns the problem of employment from the angle of master as well as man. He achieves, through the management of his enterprise, a sense of personal significance which is rich in the content of satisfaction that it offers. Consumers' coöperation, whatever its limitations, has proved itself as a way of life fitly to be regarded as a great corporate adventure in fellowship. In that aspect, certainly, no communal effort in modern times is of greater social import. No effort, either, of similar scale has been so surprisingly neglected by students of social experimentation.

From the angle of citizenship, certain features of coöperative enterprise are outstanding. The movement is, at every angle, a domocratic one. Its membership is unlimited; its dividend is always strictly proportionate to the consumers' purchases; its voting power is throughout by persons and not by investment. It has reduced the capital it employs to a properly subordinate position by its insistence on low and fixed rates of interest. The demand it supplies is by the technique of its organization more securely known than is possible under private enterprise, with the result that speculative supply is reduced to a minimum, and the employee of the coöperative store is probably more certain of employment than any producer not in the service of the state. The abolition, moreover, of profit means that there is no gambling in its shares, and that undesirable feature of a capitalist organization, whereby the shareholder becomes the residuary legatee of industry, is, at the outset, made impossible.

These are advantages of high moral value. But, from the aspect of the community, it is rather the institutions of government than the financial theory of consumers' coöperation that are of importance. Among these what is above all noteworthy is the fact that the movement is not only genuinely self-governing, but is free from the vice of centralized control. The individual coöperative store is an autonomous unit, which depends for its character upon the activities of its members. Each of these is fully entitled to play his or her part in the direction of its energies. Its committee of management is chosen by the membership; four times in each year they must consider the suggestions, and answer the complaints, of those who deal with the store. Each of these is, in its turn, a constituent unit of the great Wholesale, and the governing body of the latter is as responsive and responsible to its store members as the committee of the latter to its own constituency.

Inherent in these economic and governmental notions are certain doctrines of outstanding significance to democracy. Exactly as Nonconformity has been in education in the art of statesmanship for the working classes, so, also, has the coöperative movement trained literally thousands of workingmen to the appreciation of satisfying the wants of their fellows. They have learned how to discover demand. They have had to develop institutions for its satisfaction and intensification. They have had to do so on the basis always of equality, since their response has had to be not a response to some special and privileged economic power, but to a constituency in which no one had more authority than another. They have had to learn the art of meeting criticism by removing its causes. They have had to dwell in the realm of complete publicity for what they do. They have had to act not as they might think fit in their own interests, but as they are instructed by a constituency with definite demands to satisfy. They act, moreover, in the background of the knowledge that the reward of their success is never financial. *Sic vos non vobis* was never more true of any body of men than it is of the direction of a coöperative society. They are a standing proof of the degree to which an ideal of social service makes possible the replacement of the acquisitive motive as the dominant factor in the supply of demand.

The fact that the store is founded upon the idea of equality has had another remarkable result. The coöperative movement is not merely shopkeeping; it is also a training in the social instincts. For the more loyal the individual member is to his society the greater is the gain to be distributed among his fellow members; he cannot increase the dividend to himself without at the same time increasing it for others. The technique of the dividend seems to be a genuine instance where the good of self is definitely and deliberately intertwined with the good of others. The societies, moreover, have upon an increasing scale multiplied their efforts after social development. Educational activity, some of it, as at Woolwich, upon a quite notable scale, is a permanent feature of the economic adventure. In banking, in insurance, in house purchase, in the organization of holidays, in the attempt to build round each society a corporate life in which the members can find, if they so desire, a real spiritual enrichment, the movement has genuinely pioneered and, as genuinely, supplied felt wants which could probably have been met in no other way. It is worth while, also, to note that in periods of economic distress the value of their aid to their members has been something it is difficult to describe in words. There are whole regions in England and Scotland in which the relation between the coöperative societies and the trade unions has meant that innumerable families have been saved from the intolerable humiliation of the Poor Law. The work, too, of the Coöperative Union is an extraordinarily interesting attempt upon the part of an economic organization deliberately to provide for its own spiritual development. It is difficult to be satisfied with the level of attainment the Union has so far reached; it has rather, perhaps, been a sounding board for the expression of opinion than a method of building intellectual leadership. But its potentialities remain enormous, and there is probably no other economic organization which has thus attempted, like the coöperative movement, to build for itself a method of checking its own inadequacies, especially in their civic context, and finding means for their remedy.

Yet, however important be the criticisms of the movement for which justification can be found, the overwhelming balance for social good that remains is beyond dispute. While it is impossible to believe that a purely voluntary association of consumers can establish a balanced and adequate commonwealth, the sphere of its operation is bound to grow larger with the years. Properly related to such obligatory associations as municipalities, and developing more adequate articulation with producers' vocational bodies, it is likely, as Mr. and Mrs. Webb have argued, that the consumers' coöperative movement is destined to play an essential part in the supersession of the capitalist system.

What, to that end, modern democracy needs is the revelation of an alternative social philosophy which will do for the new social order what Adam Smith and Bentham did for the old. In a society like that of the eighteenth century, there was solid ground for insisting on the supreme benefit of free competition and individual initiative as the main weapons against an effete aristocracy and an indefensible privilege. But what has emerged from an experience of individualism is the fact that free competition and individual initiative merely create new aristocracies and new privileges as unnecessary and as indefensible as the old. The cause of this is plain. When the profit-making motive is the mainspring of social action, its operation is incompatible with democracy. For the liberty it establishes is biased in favor of those who can establish by their skill in its use a differential advantage in their favor; and this advantage, on the evidence, is mainly purchased at the cost of the community as a whole. What we require is a philosophy which prevents that differential advantage from preventing the expression of the equal claim of citizens to self-realization. We need, in other words, an equality which can evoke from men those demands which cannot go unsatisfied if the inherent dignity of their manhood is to secure satisfaction.

It is difficult to deny that consumers' coöperation has at least a partial answer to make such a need. It shows conclusively, by the grim test of financial success, that over a considerable area of economic life the elimination of profit is possible. It is impossible, either, to deny that in such an elimination there is involved, in very considerable measure, the emergence of a public spirit which, however impalpable, is the one quality upon which the future of the community depends. Men and women, doubtless, join the coöperative movement mainly for the immediate and tangible benefits that it offers. But they stay in the movement because, beyond these, they find prospects of a comradeship which plays an increasing and enriching part in their lives. It is, after all, a supremely remarkable thing that in a movement nearly a century old, with successes to its credit upon so wide a scale, no servant in any part of its effort has become a rich man, or has complained because his service was not the avenue to riches. It is not less remarkable to have demonstrated so clearly and so simply that there is no inherent necessity for the capitalist to receive rent or profit or unearned increment. It is hardly less valuable to have made it plain that, exactly as in the service of the state, the trained and scientific expert can work as effectively under democratic as under plutocratic direction. Nor must we neglect the patent evidence of the war, that control of the producer in the interest of the consumer — which was, after all, the real objective of the Ministry of Food — results in a better and less wasteful production than an unfettered system of *laissez faire*. The great increase of coöperative membership during the war was, above all, a tribute to the theory of the movement. For it showed that its deliberate refusal to bow the knee to the technique of capitalist enterprise — speculation, cornering of the market, and the rest — results in definite gain to those for whose interests it is concerned. And in the ordinary course of its effort, consumers' coöperation has proved, even in a predominantly capitalist world, that every aspect of production, from the origination of manufacture to the placing of the finished product in the hands of the consumer, requires nothing of the antisocial conduct characteristic of private enterprise.

For as the pressure of its adherents becomes impressive, so will the significance of consumption as the art of organizing leisure rightly become increasingly clear. By linking production to significant and ascertained demand, industry will be more nearly related than is now even possible to the services a fruitful leisure requires. By the increasing elimination of the profit-maker, our society will be less and less an organization built upon the acquisitive motive, more and more an organization in which power arises from social function and not from individual gain. And the wider the sphere the movement can, in this fashion, obtain, not only will the gain of the individual be greater, but also the more manifest will be the moral superiority of its effort to profit-making enterprise. For the greater the degree in which profit can be removed from the provision of essential services, the more likely they are to elevate the quality of effort that goes to their making.

2. THIS AMAZING PROSPERITY[1]

By Daisy Lee Worthington Worcester

AMERICA is the richest country in the world today. It is the richest country that the world has ever known. This fact is widely, boastfully proclaimed — in the schoolroom, in the pulpit, in the forum, in the press. Not to make the boast is to betray evidence of one's being a little less than a hundred per cent American. To analyze it, to interpret it, to evaluate, may be taken as positive proof of revolutionary activity. Yet so reputable a body as the Federal Trade Commission presents us with figures which literally goad us into something more than a complacent tribute to this amazing prosperity.

This commission, in 1926, after an investigation authorized by Congress, gave the total wealth of the country as $353,035,000,000, for the year 1922 (Federal Trade Commission, *National wealth and income*, 1926). They gave the national income as $69,833,000,000 for that same period. Conservative estimates today put those figures at $400,000,000,000 wealth, and $80,000,000,000 income.

Just as an arithmetical phantasy, let us suppose that this vast wealth of ours were evenly distributed. Every family in the United States, counting five members to a family, would have an estate, consisting of land, improvements, machinery, and so on, valued at $16,000, and every family, in addition to this, would have an annual income of $3,135. That would be prosperity, unparalleled, undreamed of. But the Federal Trade Commission gives us the realities:

---

[1] Abridged by permission from an article in the *Surve* November, 1928.

1 per cent of the people own 59 per cent of the wealth.
13 per cent of the people own 90 per cent of the wealth.
87 per cent of the people own 10 per cent of the wealth.

The tragic significance of these figures lies in the fact that this final 10 per cent of the nation's wealth is, itself, so unevenly distributed. It is owned, remember, by 87 per cent of the people. This 87 per cent includes, roughly, the laboring classes and what we have come recently to designate as the middle class. Intellectually, culturally, this middle class in America is significant. It is articulate, it is heterogeneous, it is widely inclusive. It is made up of landowning farmers, small business men, professional people, teachers, social workers, readers of *Survey Graphic* and the *Saturday Evening Post.* Its sons and daughters are straining our facilities for higher education almost to the breaking point. It represents all shades of political, religious, and social belief. To those who belong to it, it *is* America. Yet, numerically considered, it is a very small minority, only 10 per cent of the total population.

The Federal Trade Commission made its study of the distribution of wealth through an analysis of the estates of deceased persons in some twenty-four counties of fifteen states in different sections of the country. They found that 76.5 per cent of those who had died left no estates whatsoever. In other words, they revealed the fact that *the great mass of the people, more than three-fourths of them, in this, the richest country in the world, have accumulated no portion at all of this staggering* $400,000,000,000. They are the great propertyless masses, propertyless today, in the midst of all this fabulous wealth, as they have always been. Their only wealth is their wages. Their only participation in this prosperity is in the national income.

In December of last year (1927) Mr. Hoover and Mr. Coolidge made the proud boast that the average wage in all the manufacturing industries of the country was $1,280, approximately $4 a day. As Anna Rochester points out in the *Labor Age,* for February, 1928, they failed to mention that the minimum standard for health and decency, as set up by the Bureau of Labor Statistics, requires for the average family a sum well over $2,000 per year, the cost of a "fair standard of living."

In 1918, the Bureau of Labor Statistics made a study of the standard of living in Washington, D. C. They found its cost to be $2,262.47.

Probably no other single study of the Bureau of Labor Statistics has ever received greater publicity or been put to wider use. Its effect was to shock the nation into a realization of the prevailingly low wage levels in American industry. The Labor Bureau, Inc., recognizing the great value of the study, proceeded to find the cost of the same standard in different parts of the country. In Brooklyn, its cost was $2,342, in Chicago, $2,499, in San Francisco, $2,600.

Not long ago, I sent to the present Commissioner of Labor Statistics, Ethelbert Stewart, to secure a copy of this Washington report. I was amazed at his reply. He said that the work had been done by a previous administration, that it was now out of print, and that in spite of frequent requests, he had refused to have it reprinted. He was sending me, he said, another study of the actual expenditures of 12,096 families. "It seems to me," he added, "that the actual expenditures of 12,096 bona fide workingmen's families is a better measure of the American standard of living than a theoretical budget made up of estimates."

I made a very careful analysis of these 12,096 families, studied by the Bureau of Labor. Ninety-two per cent of them received less than $2,100 per year, a sum which is only slightly in exceess of that fixed by the National Industrial Conference Board as the cost of a fair standard of living, and is slightly below that of the Bureau of Labor Statistics. The families are divided into income groups. Those in the lowest group receive less than $900 per year, those in the next group from $900 to $1,200, and so on up the the highest group, over $2,500. There were only 1.3 per cent of the workers who fell into that highest group. This, we are told, is a cross section of American industrial life. We must bear in mind that these are family, and not individual, incomes.

3. PROGRESS OR DECADENCE [1]

By Harry F. Ward

Professor of Christian Ethics, Union Theological Seminary

How goes it then with freedom and equality in these United States at the present time? The answer to this question does not lie in the experience of most of the educated middle class. They are free to say and do most of the things they want to say or do. They feel themselves the equals of anybody, and most of them are in command of the means of self-development. In order to see the state of freedom in its simplest and also most illusory form — freedom of opportunity — we must get to the viewpoint of the people who see what culture we have from outside and below. It is those who have not yet arrived who can tell us how free and equal is the chance to develop life in these United States, that is, they could if they could talk. I wonder what the gains that have been written about in this series mean to them; especially if they happen to live in a textile center, a steel or coal company-owned town, on a tenant or mortgaged farm, or even in that apotheosis of our development — an automobile city; and more especially if they have a desire to achieve some genuine culture for themselves or for their children. This possibility, on even terms with others, they have been promised by the American philosophy of equality. Is it not advertised to the ends of the earth as the great achievement of the democratic way of life on which we possess the patent? How does our knowledge of producing and developing better babies — the basic test of any civilization — extend to them? What proportion of their children will go to high school or college? How will that proportion compare with the record of those who came to this land of free natural resources earlier? And with those of other economic strata today? This is the test of whether or not a democratic civilization is developing. Does it spread its culture to the bottom of its population? Is it penetrating to those who are least efficient economically? Or is it static, resting on a certain income level? This is the test and meaning of statistics of income and ownership. If we can estimate the amount of culture and the desire for it among the lowest economic strata of the population, we shall get reality into the dispute over the amount and meaning of the recent rise in real wages for sections of city workers and of the fall in real income for large sections of farmers.

---

[1] Reprinted by permission from *Recent gains in American civilization*, edited by Kirby Page, copyright 1928 by Harcourt, Brace and Company, Inc., pages 284–303.

It is indisputable that cultural equality and economic equality are interdependent. The former can only be realized as the latter is approximated. Hence the significance of the recent concentration of income and ownership in this nation. It means a stratified class culture. It means that the United States is beginning to repeat that particular aspect of

European life of which it has been stridently critical, and is losing that equalitarian tone which was distinctive of its democracy. It cannot be denied that to an increasing section of the workers on the soil and in the city the door to the cultural life for their children is shut and barred. Those who survive the influence upon their tastes and standards of the press and the radio, if they are also physically strong enough to withstand the fatigue of monotonous, high-speed labor, may some of them still earn their way through college. But more of them will go as beneficiaries of endowments. Likewise those who prefer less stereotyped education will avail themselves of libraries, museums, and lectures by the grace of charity. It is the same with religion. That, too, is dispensed as alms, not only to the unfortunate and inefficient but also to those who are where they are, as against the prosperous, simply because they or their parents came too late to share in the initial exploitation of the unparalleled natural resources of this continent. The control of these resources, and of the trade and investment they made possible, by the successful, under the original American doctrine of freedom of opportunity, is the stern economic fact which determines the future of that doctrine.

A class culture is inevitably nationalistic and imperialistic. It asserts the same privileges against other nations abroad that it holds against other classes at home. It is either patronizing or aggressive, condescending or cruel, supercilious or blatant. In short, it is typically one hundred per cent American; it is America First; it is the supremacy of the White Nordic Protestant, or of the intelligent who have tested the intelligence of the others and signed the certificate of their own. But a manner of living that is entitled today to the name civilization must be part and parcel of the whole life and struggle of mankind. It must both draw from and pour into the common pool of resources for the development of the common life of man. It must be not only willing but anxious to universalize its gains, to share its experience and resources with all other peoples and in like manner to receive from them. Because we now live and move on the world stage, we can no longer measure one sectional life against another under the term civilizations. They are but cultures, still predominantly local perhaps, but not exclusively so. Therefore the life of any people must now be measured by what it contributes to the rest of the life of man. No way of life that draws tribute from others, that waxes strong at the cost of making others weak, can henceforth be regarded as civilized, no matter what the state of its machinery, art, literature, or religion. Imperialism is as barbarous now that the sun of world brotherhood is rising as was the plundering of the Goths when the sun of imperial Rome was setting.

To those who make this appraisal of us we are not yet a civilization but only the possibility of one. To realize this possibility we must acquire humility enough to learn from older peoples and grace enough to share with the rest of the world our capacities and the capital made possible by our exceptionally favorable environment. Yet it is against this course that we have recently been moving. Our recent development of investment imperalism and crass nationalism goes in the opposite direction. They bring segregation and conflict, not fusion and coöperation. Moreover, the distinctive elements of early American life, its passion for freedom and equality, which have universal value and appeal, and which therefore are the qualities that fit us to take part in the development of a universal civilization, are precisely the qualities we have recently been losing. Without them, what are we in the end but another imperialism which must give way to a civilization yet to be established on a different basis from profit.

There is another test which our own wisdom as well as that of the East is beginning to put to our manner of life. The essential characteristic of that manner of living which in the past has in common usage been called civilization, whether it was in China, Greece, or Medieval Europe, is unity. Life was within the compass of a scheme; it had unity. Its relationships were ordered; there was a universal sense of status and obligation. But this is exactly what is lacking in the Western World, and most of all in these United States. And over its absence we even exult. The transition from the obligation of status to freedom of contract is hailed as a great step forward. Is not the road to the top always open for the most able? Let everyone look out for himself and the common weal will automatically be taken care of. Let individual selfishness go its own way, within the limits of the criminal law, and social harmony will come without thought or effort, especially if we put the most potent curses on every proposal to improve life by ordered effort. The actual outcome of course is mostly chaos and conflict. We have not yet begun to make our civilization. We live in a disordered world, in a time and place too full of antagonisms.

The essence of harmony in those days and scenes where men achieved some unity of life was in the conjunction between the cultural and the economic aspects of living. In Greece the aristocracy of the intellect and the labor of the slaves were interwoven; in China the family determined both ethics and economics; in the high days of Medieval Europe feudalism gave everybody his place and duty in the common life for which they all lived. Today there is not only no plan, system, or order over vast areas of our economic life save the control set up by organized greed, but our cultural life and our economic activities are proceeding by contrary principles. Democracy is the slogan of our culture, autocracy the dominant principle in our industrialism which comes increasingly within the grip of a financial oligarchy. The ethics of our professed religion is to love our neighbor as ourselves; the law of business enterprise is to make a profit out of him. Our political philosophy is rooted in freedom and equality, our industrial practice tends irresistibly toward monopoly and concentration of power. It is this basic conflict between our culture and our economic activities that tears our life asunder and leaves it broken and disordered. And this disorder again is at odds with the machine, which demands a technique of coördination. The condition of civilization for a machine age is social planning and social control. This will bring not only order where there is now chaos but spiritual unity where there is now warfare and anarchy. And since the power machine both makes possible and requires a world civilization, this planning and control must be on a world scale.

Here is our test. If our economic philosophy and arrangements make for class culture and conflict, they make also for nationalism and imperialism. In that case any gains which may be registered in a paper programme against war, in the spread of education, or the socialization of religion are deficient in reality and will not show permanence. If these gains are to endure and continue, the economic forces must be brought into harmony with them, which means they have to be transformed from planless, divisive activities into ordered, integrating pursuits.

What evidence is there that in the last decade or two the people of the

United States have addressed themselves to this basic problem of modern life? Everywhere, from child labor to electric power, the scant forces that seek the civilization which the machine makes possible are holding the trenches against the continuous assaults of greed and ignorance. Never was the philosophy of profit-seeking as the way to the Promised Land so vocal or so dominant in our public life. Never was our government so controlled by successful business enterprise nor our press so given over to money-making. When were the people so indifferent to their freedom? The days since the World War are, like those that followed our civil strife, the dark days of our record. In them we have been moving away from our early ideals and away from those by which alone a free and ordered, a just and fraternal world can be fashioned. A sophisticated, imperialist United States is more dangerous to the rest of mankind than one that was ignorant and isolated. It is too early yet to know whether these recent tendencies represent the real drift of the American current or are only a side eddy. If they continue, there is history enough to read their meaning — they spell decadence once again. If this country is to contribute anything more toward progress, it is necessary for it to apply its bent for invention to the discovering and developing of the forms of economic organization which will enable its original principles to be realized throughout its population and its genuine friendliness toward other nations to become a practical reality.

4. THE HOUSE DIVIDED AGAINST ITSELF[1]

By John Dewey

More than one person, in reading the Lynds' *Middletown*, has been struck by the number of connections in which some large part of the population of that town finds itself "bewildered" or "confused." The appropriateness of this state of mind to American life today, this cross section makes evident. It is becoming commonplace to say that in thought and feeling, or at least in the language in which they are expressed, we are living in some bygone century, anywhere from the thirteenth to the eighteenth, although physically and externally we belong to the twentieth

[1] Reprinted from an article in the *New Republic*, April 14, 1929.

century. That focus of American life called "Middletown" gives vivid freshness and fullness to this commonplace.

Anthropologically speaking, we are living in a money culture. Its cult and rites dominate. "The money medium of exchange and the cluster of activities associated with its acquisition drastically condition the other activities of the people." This, of course, is as it should be; people have to make a living, do they not? And for what should they work if not for money, and how should they get goods and enjoyments if not by buying them with money — thus enabling someone else to make more money, and in the end to start shops and factories to give employment to still others, so that they can make more money to enable other people to make more money by selling goods — and so on indefinitely? So far, all is for the best in the best of all possible cultures: rugged — or is it ragged? — individualism.

And if the culture pattern works out so that society is divided into two classes, the working group and the business (including professional) group, with two and a half times as many in the former as in the latter, and with the chief ambition of parents in the former class being that their children should climb into the latter, that is doubtless because American life offers such unparalleled opportunities for each individual to prosper according to his virtues. If few workers know what they are making or the meaning of what they do, and still fewer know what becomes of the work of their hands — in the largest industry of Middletown perhaps one-tenth of one per cent of the product is consumed locally — this is doubtless because we have so perfected our system of distribution that the whole country is one. And if the mass of workers live in constant fear of loss of their jobs, this is doubtless because our spirit of progress, manifest in change of fashions, invention of new machines and power of overproduction, keeps everything on the move. Our reward of industry and thrift is so accurately adjusted to individual ability that it is natural and proper that the workers should look forward with dread to the age of fifty or fifty-five, when they will be laid on the shelf.

All this we take for granted; it is treated as an inevitable part of our social system. To dwell on the dark side of it is to blaspheme against our religion of prosperity. But it is a system that calls for a hard and strenuous philosophy. If one looks at what we do and what happens, and then expects to find a theory of life that harmonizes with the actual situation, he will be shocked by the contradiction he comes upon. For the situation calls for the assertion of complete economic determinism. We live as if economic forces determined the growth and decay of institutions and settled the fate of individuals. Liberty becomes a well-nigh obsolete term; we start, go, and stop at the signal of a vast industrial machine. Again, the actual system would seem to imply a pretty definitely materialistic scheme of value. Worth is measured by ability to hold one's own or to get ahead in a competitive pecuniary race. "Within the privacy of shabby or ambitious houses, marriage, birth, child-rearing, death, and the personal immensities of family life go forward. However, it is not so much these functional urgencies of life that determine how favorable this physical necessity shall be, but the extraneous detail of how much money the father earns." The philosophy appropriate to such a situation is that of struggle for existence and survival of the economically fit. One would expect the current theory of life, if it reflects the actual situation, to be the most drastic Darwinism. And, finally, one would anticipate that the personal traits most prized would be clear-sighted vision of personal advantage and resolute ambition to secure it at any human cost. Sentiment and sympathy would be at the lowest discount.

It is unnecessary to say that the current view of life in Middletown, in Anytown, is nothing of this sort. Nothing gives us Americans the horrors more than to hear that some misguided creature in some low part of the earth preaches what we practice — and practice much more efficiently than anyone else — namely, economic determinism. Our whole theory is that man plans and uses machines for his own humane and moral purposes, instead of being borne wherever the machine carries him. Instead of materialism, our idealism is probably the loudest and most frequently professed philosophy the world has ever heard. We praise even our most successful men, not for their ruthless and self-centered energy in getting ahead, but because of their love of flowers, children, and dogs, or their kindness to aged relatives. Anyone who frankly urges a selfish creed of life is everywhere frowned upon. Along with the disappearance of the home, and the multiplication of divorce in one generation by 600 per cent, there is the most abundant and most sentimental glorification of the sacredness of home and the beauties of constant love that history can record. We are surcharged with altruism and bursting with desire to "serve" others.

These are only a few of the obvious contradictions between our institutions and practice on one hand, and our creeds and theories on the other, contradictions which a survey of any of our Middletowns reveals. It is not surprising that the inhabitants of these towns are bewildered, uneasy, restless, always seeking something new and different, only to find, as a rule, the same old thing in a new dress. It may all be summed up, perhaps, by saying that nowhere in the world at any time has religion been so thoroughly respectable as with us, and so nearly totally disconnected from life. I hesitate to dwell on the revelation that this book gives of "religious" life in Middletown. The glorification of religion as setting the final seal of approval on pecuniary success, and supplying the active motive to more energetic struggle for such success, and the adoption by the churches of the latest devices of the movies and the advertiser, approach too close to the obscene. Schooling is developed to the point where more pupils reach the high school than in other lands; and one-half of the pupils in the last years of the high school think that the first chapters of the Hebrew Scriptures give a more accurate account of the origin and early history of man than does science, and only one-fifth actively dissent. If the investigation had been made when a certain questionnaire was distributed among our school children, it is likely that the usual percentage of youth would have recorded their belief that Harding was the greatest man in the world. In another way, the whole story is told in brief when one contrasts what is actually happening to family life and the complete secularization of daily activities with the statement that "the three notable words in the English language are mother, home, and heaven," a remark that would certainly pass unquestioned in any representative American audience.

It makes little difference whether one selects important or trivial aspects of the contradiction between our life as we outwardly live it and our thoughts and feelings — or at least what we say are our beliefs and sentiments. The significant question is: What is the cause of this split and contradiction? There are those, of course, who attribute it to the fact that people being, generally speaking, morons and boobs, must be expected to act out the parts to which they are assigned. The "explanation" does not take us very far, even if one accepts it. The particular forms that the alleged boobery takes are left quite unaccounted for. And the more one knows of history, the more one comes to believe that traditions and institutions count more than native capacity or incapacity in explaining things. It is evident enough that the rapid industrialization of our civilization took us unawares. Being mentally and morally unprepared, our older creeds have become ingrowing; the more we depart from them, in fact, the more loudly we proclaim them. In effect we treat them as magic formulae. By repeating them often enough we hope to ward off the evils of the new situation, or at least to prevent ourselves from seeing them — and this latter function is ably performed by our nominal beliefs.

Of one thing I feel quite sure. It is not true that machinery is the source of our troubles. The machine supplies means, tools, agencies. It opens opportunities for planning and extends the ability to realize such ends as men propose. If we do not plan, if we do not use machinery intelligently on behalf of things we value, the fault lies with us, not with the machine. This fact underlies, I suppose, the contradiction in our life: with an enormous command of instrumentalities, with possession of a secure technology, we glorify the past, and legalize and idealize the *status quo*, instead of seriously asking how we are to direct and employ the means at our disposal. This is our great abdication. There is a strain of fear running through American life which controls our activities to an untold extent. We dare not act lest we upset something. This state of fear will, presumably, endure until we begin to plan our living in a systematic and collected way, which means of necessity a collective way.

What stands in the way is not a machine age, but the survival of a pecuniary age. The worker is tied helplessly to the machine, and our institutions and customs are invaded and eroded by the machine, only because the machine is harnessed to the dollar. We cling to old creeds, and we profess ideas and sentiments that have no real hold on our living activities, because a régime of pecuniary profit and loss still commands our allegiance. In this fact the contradictions of Middletown, that is, of Anytown, come to a unity. The cults and rites, the folkways and folk-lore, of a money culture form the patterns of our life, and in them alone our industrial practices and our sentimental ideals and theories harmoniously agree. Not till we have questioned the worth of a dominantly money-civilization shall we have a religion that is more than sentimental and verbal, and achieve an integrated life. This money domination is not peculiarly American; it is our chief institutional inheritance for the Old World. Its evils are more acute with us just because we, more than other peoples, have command of the instruments and the technology with which to create, if we will, a new civilization.

5. THE PRICE OF LIVING COMFORTABLY[1]

By Raymond B. Fosdick

One of the most disconcerting books published in recent years came out a few months ago under the title *Middletown*. It is a carefully documented, scientific scrutiny of the way life is lived in a typical American community. Just as Fabre, the biologist, made his studies of the habits of spiders and bees, so the authors of this book undertook the task of examining the human species that swarm in our towns and cities. I speak of this particular study in anthropology with some degree of assurance because I happened to be a trustee of the institute under whose aegis it was projected, and I was able to follow rather intimately its attack upon its problem.

The book, based upon the research, is little short of devastating. Here is a town (with an anonymous name) of thirty-eight thousand people, carefully selected because of typical features which it shares with nearly a hundred and fifty other communities in the United States of more or less the same size. Its population is largely native-born of native parentage. It has participated generously in all the material comforts which in the last forty years have come to be a distinguishing mark of our American civilization. Its homes are equipped with electric lights, radios, bathrooms, telephones, electric irons and toasters, and other labor-saving devices. Its women and girls wear silk dresses and silk stockings to an extent that was undreamed of a generation ago. Two out of every three families own an automobile. Nine motion picture theaters operate continuously seven days a week from one to eleven P.M. Finally there is a Chamber of Commerce and a Country Club and a Rotary Club, and a belief that Middletown is "the best place on earth."

---

[1] An address delivered at the commencement exercises of Smith College, June 17, 1929.

But here is a population, too, where business-class men read less than they did forty years ago; where one hears little or no discussion of books; where the *American Magazine* and the *Saturday Evening Post* have from sixty to a hundred and twenty times as many subscribers as the *Atlantic Monthly* or *Harper's* or the *New Republic;* where an appreciation of music or poetry or the other arts is almost nonexistent among the men. Here is a town in which money is preëminently the measure of value; in which worth is measured by ability to hold one's own or get ahead in the competitive, pecuniary race; in which a smug and narrow conservatism dominates political, social, and economic activities; in which men and women rush at so feverish a pace that there is no time left to think of the purpose and meaning of life. Here is a town that at bottom is dominated by fear — a fear of offending against the group, a nervous anxiety to run with the herd, the keying down of spiritual force to the general level. "Look at their faces," say the authors of this book in describing a Rotary Club meeting. "Oddly, they seem all of one type. One mark is on them all. No deep calm lines of single purpose, no steady driving set of jaw, no eyes of meditation. Rather a harassed and a scattered look, the mark of a thousand small habitual restraints, the price of living comfortably with neighbors."

Truly it is a disheartening picture that this book gives us of contemporary American life. We are sophisticated in the mechanism of living and pitifully naïve in almost everything having to do with the purposes of living. We are captivated by the magic of our machines, and life has become to many of us the process of using automobiles and vacuum cleaners and electric ice-cream freezers. Standards are based upon the possession of all these new contrivances, and they become the objects for which life is lived. We rise from one social and economic level to another as we acquire an automobile or a washing machine or equip the house with electric lights. If this seems like an exaggerated picture, turn to the advertisements of a magazine like the *Saturday Evening Post*, with its millions of circulation, and read the persuasive, compelling descriptions of the myriad of things without which no home is complete. Or read in the last number of the *Atlantic Monthly* Mr. Filene's article called "Mass production makes a better world." Or study the complacent rationalizations that fall from the lips of our business executives all over the country and are printed on the market pages of our newspapers. Or read the current industrial philosophy contained in the widely read books of Garrett, Javits, and Ford, with its goal: a civilization run by engineers; its technique: the high-wage-low-price policy; and its boldly proclaimed slogan: "Make Everybody Rich." Or pick up *Middletown* and get the picture of thirty-eight thousand people driving anxiously for the possession and enjoyment of all the devices which modern science in this generation has so lavishly produced.

Now the tragic part about Middletown is that with all their mechanical improvements — their radios, their automobiles, their telephones — the people do not seem particularly happy. Worse than that, the life that they live, compared with the way life could be lived, seems unutterably dull. It is narrow and unimaginative, and a single pattern runs through it all. Everybody has hitched his wagon to the same star. Everybody is wanting the same kind of things and thinking the same kind of thoughts. Just as there are accepted models of automobiles, and accepted brands of canned goods, so there are accepted types of ideas and accepted methods of living. Middletown is a town where everyone conforms; one does not vary from the standard or norm. One joins the Country Club, if one can afford it, and thus permanently fixes his social status in the upper register. One becomes interested in municipal reform — and votes the straight Republican ticket on election day. One joins every conceivable kind of organization or committee devoted to the improvement of this or that, and spends frantic hours rushing from one engagement to another. A successful lawyer is likely to belong to the Bar Association, the Chamber of Commerce, the Rotary Club, one of the two or three leading churches, a high order of the Masons, the Country Club, and be a director of the Y. M. C. A.; while his wife joins the more fashionable women's clubs, the group directing the local charities, and of course, the Country Club. One hears serious discussion, not of international relations or of the new civilization in which the world is bound together in an untried propinquity, but of the success of the local basketball team or of the Chamber of Commerce rally for a bigger Middletown. One talks of tolerance and becomes tremendously concerned at the prospect of a Roman Catholic in the White House. One believes that the sanctity of property is the corner stone of the nation, and if a few shares of stock are acquired — perhaps in an oil company — one votes to retain as president of the corporation a completely discredited man now in jail, for the reason that he has been good to the small stockholders. In other words, if one lives in Middletown, one does as the Middletowners do. "It is rather comforting to know," said a recent Middletown editorial, quoted by the authors of this book, "that the great masses of business men, of which there are excellent examples in Middletown, sit steady in the middle of the boat."

It is customary, I understand, for commencement speakers to express some apprehension as to whether the graduating class is prepared for the responsibilities which it must assume, whether its members will bring to their new tasks a sense of deportment and a standard of right and wrong which modern society approves. I have no such apprehensions to express. My fear is that, returning to the Middletowns of the United States, your lives will be very respectable and very dull. My apprehension is that you will be fitted with far too little resistance on your part into the thinking and habits of Middletown; that coming from an institution like this, where criticism and analysis range over wide fields of conduct and ideas, you will allow yourselves to be adapted far too easily and too quickly to the narrow intellectual horizons, the petty standards, and the small prejudices of the communities in which you live. My concern is that you will catch the contagion of fear, that you will too gladly pay the price of living comfortably with neighbors. My apprehension is that you will walk in the middle of the road and sit in the middle of the boat, and too soon forget the duty that is laid on all those who would call themselves educated — the duty of rebellion. I am not afraid of your nonconformity; I am afraid of your conformity. I do not worry about your dissent; I worry about your acquiescence. It is not your unrest and discontent that bother me as I think of your future; it is your complacency. The thing that I dread for you is the cloud of dullness settling over your lives as it has settled over the lives of so many who have gone before you.

In Breasted's *History of Ancient Egypt* there is a description of the way people lived under the Middle Kingdom. To be successful a man had to have a mud house, a yoke of oxen, a plough, and his share of water from the Nile. One gets an impression of deadly monotony, of colorlessness and unimaginative routine, as generation after generation grew from infancy to old age surrounded by the same tasks, habits, and thoughts.

When some future Breasted digs down through the crust of our civilization, will he find similar evidences of complacency, similar indications of a standardized existence? And will this be the verdict of archeology on our time: Here was a people who in spite of all its mechanical improvements lived lives that were unimaginative and dull; here was a great and busy people who missed happiness.

Now in trying to understand the reasons for the dullness of Middletown, the first obvious fact that stares us in the face is that a common pattern runs through the lives of all the people. There is little place for variety. Life in Middletown is herd life. There was talk when one well-to-do family moved a little way out of the city and built its house back from the road, partially hidden by a grove of trees. There were mutterings when it was learned that one or two citizens were thinking of voting for La Follette in 1924. There are few individual "hobbies" in Middletown; for as the authors of this book say: "A hobby tends to be like a heretical opinion, something to be kept concealed from the eyes of the world." Men and women dance, play cards, and motor as the crowd does. A decreasing number is interested in gardening, a few turn to books, one or two surreptitiously write a little. But being "different" is difficult business in Middletown. Originality is apt to appear as flightiness, and individualism seems to cast doubt on the great social and ethical principles which may happen at the moment to be immutable. As Trotter says in his book on the herd: "Variations from the normal standard in intellectual matters are tolerated if they are not very conspicuous, for man has never yet taken reason very seriously, and can still look upon intellectuality as not more than a peccadillo if it is not paraded conspicuously."

But what is the use of all this educational machinery here at Smith and elsewhere if it does not equip us with a capacity to be "different"? If our thoughts are to be herd thoughts, our habits herd habits, our life the herd life — if we are to be content with a mud house, a yoke of oxen, and our share of water from the Nile — why these four years spent on this campus and why this extravagant equipment and all this laborious intellectual effort?

A capacity to be different; a contempt for majorities; a determination to climb mountains if one climbs alone — this is the true end of education. Only in so far as they promote this attitude do our colleges justify themselves; only in so far as you have acquired this attitude does your diploma today signify anything important.

For it is always the minorities that hold the key of progress; it is always through those who are unafraid to be different that advance comes in human society. No more compelling illustration of this fact has recently occurred than that afforded by a distinguished son of Massachusetts, that master of dissenting opinions, Mr. Justice Oliver Wendell Holmes of the United States Supreme Court. In one of the Middletowns of our country, Madame Schwimmer, a pacifist from Hungary, applied for citizenship in the United States and was refused. The case was carried to the Supreme Court, where the refusal was sustained by a majority vote. But Mr. Justice Holmes wrote a dissenting opinion which is a landmark in the fight for the rights of minorities. "If there is any principle of the Constitution," he said, "that more imperatively calls for attachment than any other, it is the principle of free thought — not free thought for those who agree with us, but freedom for the thought that we hate." . . . "I would suggest," he goes on to say, "that the Quakers have done their share to make the country what it is, that many citizens agree with Madame Schwimmer's beliefs, and that I had not supposed hitherto that we regretted our inability to expel them because they believe more than some of us do in the teachings of the Sermon on the Mount."

This is the kind of spirit that lifts life out of the rut. This is the flashing courage that relieves life of its tendency to dullness and complacency. It is only as we escape from the voice of the herd, and break away from the pattern thinking and pattern habits of Middletown, that we identify ourselves with those progressive forces that in all generations have had to pull against the respectable lethargy of the crowd. Not through majorities, but through minorities, is the flame of human freedom kept burning. Not by what the mob believes, but by what the individual believes, do we maintain in this world the Kingdom of the spirit.

But there is another reason for the dullness of Middletown which is obvious to anyone who studies the community life. In Middletown everybody is busy. Idleness is a vice. To be continually busy: to fill one's days with exacting engagements, to rush from one organized activity to another — in brief, to keep going — this is the supreme virtue in Middletown. Perhaps it is a half-forgotten memory of that unhealthy Puritanical maxim that "Satan finds mischief for idle hands to do"; perhaps it is a survival of our frontier days when intense and driving activity was the price one paid to live. Whatever the cause, there is no spirit of leisure in Middletown. There is no time to read, no time to think, no time for those genial hours of irrelevance that make for serenity and balance. Instead, everybody must continually justify his existence by doing something, by engaging in some tangible activity. One must be driving a car or telephoning or attending a meeting or going to the movies. And one does these things because everyone else is doing them. Middletown gives the impression, not of an aggregation of individuals, born with different desires and tastes, but of a disciplined army, everybody in step — and lock step at that. Or, to vary the figure, Middletown is not a city where beauty and truth are sought, where the good life is cultivated, where one walks in leisure with the great spirits and the great thoughts that have peopled the world. Rather, Middletown is an ant hill where all day long from morning to night the ceaseless procession comes and goes, each ant, driven not by reason but by instinct, doing precisely what every other ant is doing. Middletown has never heard the voice of Tolstoy crying: "In the name of God stop a moment, cease your work and look around you." The motto of Middletown is "hustle," and it makes little difference where you are headed, provided you are vigorously on your way.

But why all this mass hurry? Why all this excited motion, this hectic futility? And why this philosophy of action, this glorification of the strenuous life, this belief that there is some deep virtue in keeping busy? I think of Charles Darwin, confined by invalidism to his English garden, dreaming dreams that were to shake the world. Do you remember what his gardener, who loved him, said about him? "I often wish he had something to do. He moons about the garden, and I've seen him standing doing nothing before a flower for ten minutes at a time. If he only had something to do, I really think he would be better."

But Middletown has something to do. It spends no time mooning about a garden or dreaming dreams. Middletown believes in motion, and all its golden hours are spent in feverishly plastering up its mud huts, in driving its oxen as fast as oxen will go, and in drawing as much water from the Nile as the buckets will hold.

Perhaps I am leaving this matter, as far as you are concerned, rather up in the air. Granted that Middletown is dull because it lives a standardized life and because it exhausts itself in keeping busy with superficial things, what can we do about it? Many of you will keep house in Middletown or teach school there or enter other of its occupations. What can the individual do in such an environment? How is it possible to be in the herd and not of it?

I do not come this morning with any specific answers to these questions. The adjustment must be an individual adjustment and there is no single road where all may walk. But I should like to suggest by way of a tentative approach that the only life worth living at any time in any age is the adventurous life. Now by the adventurous life I mean primarily a life that has a capacity to be different. I mean a life that is willing to cut loose from the past for the sake of the future, that will take chances in casting off from old traditions and old techniques. I mean by the adventurous life a life unwilling to remain tied up in any port, preferring to ride the high seas in search of fairer lands — a life that finds serenity in growth.

Of such a life the dominant characteristic is that it is unafraid. It has banished the word fear from its vocabulary. In the first place, it is unafraid of what other people think. Like Columbus, it dares not only to assert a belief but to live it in the face of contrary opinion. It builds its house back from the road, hidden by a grove of trees. It is not deterred by considerations of propriety from voting for the La Follettes of the world. It does not adapt either its pace or its objectives to the pace and objectives of its neighbors. It does not fear solitude either physical or intellectual. It is not afraid of standing before a flower for ten minutes at a time and dreaming dreams that have no practical meaning. It thinks its own thoughts, it reads its own books, it develops its own hobbies, it establishes its own standards, it is governed by its own conscience. It mortgages the integrity of its mind to no political party, to no ecclesiastical organization, to no group whatsoever. Its mind is its own; its loyalties are self-selected; and it is its own court of last resort. The herd may graze where it pleases or stampede when it pleases, but he who lives the adventurous life will remain unafraid when he finds himself alone.

The adventurous life is not only unafraid of what other people think; it is unafraid of change. It does not shrink when confronted with new ideas. "Would you believe it," wrote Galileo to his friend Kepler, "there were teachers in the Gymnasium at Padua, who, when I offered it to them, would look neither at the planets nor at the moon through the telescope?" Galileo is dead these three hundred years, and his little inch-and-three-quarters telescope has been succeeded by a two-hundred-inch giant. But would you believe it, there are today men and women in Middletown who tremblingly shut their eyes to every new social and economic fact that is offered them? There are business men who refuse to look at the tariff or at the question of the inter-allied debts through the glass of the new unity of our modern civilization. There are Daughters of the American Revolution who are repeating hysterical catchwords about patriotism that long ago became meaningless and unintelligible. "How you would have laughed," wrote Galileo to Kepler, "when at Pisa the first teacher of the Gymnasium there endeavored to tear away the new planets from the heaven with logical arguments." Middletown's sense of humor is undeveloped, or it would laugh at its own attempts to resist by slogans and catch-cries the inevitable encroachment of new methods like the League of Nations or of new arrangements in human society such as Ramsay MacDonald is planning for England.

But Middletown's attitude is not the attitude of the adventurous life. The adventurous life is eager for new ideas. It stands on tiptoe before every promise of discovery in the physical and social sciences. It waits with high anticipation for news from the far frontiers of knowledge, where some pioneer — an Einstein, an Eddington, a Niels Bohr — is pushing forward where the human mind has never before gone. It watches with fascinated interest the progress of experiments and demonstrations in government, in education, in law, in family relationships, and in all those fields in which our social engineers are attempting to improve the technique of human contact. The adventurous life does not hide its head in fear at the mention of the names of Lenin or Judge Lindsey. It knows that change is an inevitable accompaniment of all life; that nothing is permanent in human ideas or human institutions; that the values and principles of this generation will be altered or discarded by the next; and that, after all, it is only through change that we escape stagnation. The best protection for the present system is to improve it.

Therefore the adventurous life does not fear alteration in human knowledge and arrangements; it welcomes it. It is not afraid of new ideas; it is eager to test them. It does not try to take refuge in the past; it reaches its hands toward the future.

The adventurous life is unafraid not only of what other people think and of new ideas; it is unafraid of one thing more: it is unafraid to keep on growing. As I grow older and my college days recede further into the past, I realize that there is a tragedy about life that I had not suspected: and that is, that after a while life stops growing, change becomes painful to contemplate, and we hug to ourselves our present stock of ideas in anxious fear that somebody is going to take them away from us.

On this point I am talking, perhaps, not so much to the graduating class as to the parents and faculty here today whose generation I can claim to represent. And yet, after all, sooner or later you members of this graduating class will find yourselves where we are now, and I wonder whether you will sense what I sense in so many of my generation: a hardening of the intellectual arteries; a growing belief that truth has finally been arrived at and that it is inadvisable to disturb it; a desire to play safe; a disinclination to pursue the adventurous life.

I read the other day in a newspaper a graduating address delivered by a man who when I was in college was looked up to as one of the flaming leaders of liberalism in his special field of thought. But in this address of the other day he was appealing to the rising generation to join him in a crusade against a new heresy. What had happened in his case is what I fear happens to so many teachers and leaders: he had made his fight for liberalism and then had contentedly dug himself in on the line of the new trenches, not realizing that a fresh attack had swept over his head and that the battle area was being developed far in advance. Consequently, he is no longer a liberal; he has become a conservative, anxious about this new generation. He is no longer a leader; he has become a drag on the army. He sulks in the old dugout, querulously complaining about those who would lay impious hands on the objectives for which he fought, just as the preceding generation complained about him.

In contrast I think of the mother of Lord Haldane, who at the age of ninety took up the study of Hebrew because she wanted what she called "a fresh interest," and at ninety-two advised her distinguished seventy-year-old son to identify himself with the Labor Party because, she said, it promised so much more for the good of England than the Liberal Party under its outworn leadership.

A capacity to keep on growing — this is part of the adventurous life. It means that one is unafraid to keep up with the procession; that there is no slowing down in interest and eagerness; that one does not come to the end of the journey hugging an armful of faded ideas that once were fresh but from which the fragrance has long since escaped.

You who are going back to Middletown, take with you this ideal of the adventurous life: a life that is eager and unafraid. It is the only prescription I know of for the dullness of the standardized existence. It is the only possible attitude by which we can face living with ploughs and oxen on the banks of the Nile. And it need not be too greatly affected by environment, because it is a life lived from within. It is an attitude of mind. The herd life goes on about us with its altars to unknown gods, but we worship at the shrines that our own hands have fashioned. The crowd mills feverishly one way and the other, but we have built a shining citadel against the world — ramparts where we defend against the pressure of convention the home of the unsubdued. The citizens of Middletown are concerned about ballast for the boat, but we are concerned about sails, and we are unafraid as we stretch them to the tall masts, where they will collect the winds of space.

INDEX

A

Abrams *v.* United States, dissenting opinion, 742–43
Accidents, industrial, 281, 495–506; prevention and compensation, 495–506; children in industry, 497–99; playgrounds as preventive facter, 517–18; street, 517–18
Adams, John, cited, 553
Adams, Thomas, cited, 588, 619
Adjective law, outline, 191
Adolescence, and crime prevention, 324
Advertising, code of ethics of International Advertising association, 52–4
Advertising signs, restrictions under city plan, 564–65
Age limits for school attendance, 545
Agnosticism, 703
Agricultural colleges, 420
Agricultural districts, *see* Rural districts
Agricultural Economics, Bureau of, 420
Agricultural organizations, membership, 136
Agriculture, United States Department of, work, 536
Allgeyer *v.* Louisiana, 169
Allred, C. E., outline of living conditions in poorer agricultural sections, 387–408
Amendments to the Constitution, 100, 120, 158–59, 163–88, 192, 255–56
American Bar Association, 221, 248
American Federation of Labor, war-time growth, 122; nonpartisan political campaign, 139–40; *see also* Trade Unions
American Judicature Society, propaganda for reform of judicial administration, 228
American Law Institute, work of, 205–217; report of committee on the establishment of a permanent organization for improvement of the law, 189–205
American Law Schools, Association of, 206
Anderson, Nels, on recreation, 513–30
Anderson, Dr. Victor, cited, 312
Andrews, John B., on accident prevention and compensation, 495–506
Arbitration, small claims, 276–78
Architecture, and city planning, 573–75
Arkansas, uniform laws movement, 223
Art juries, 573
Atheism, 703, 717–18
Aurelius, Marcus, and Christianity, 713–14
Automobiles, cause of increasing legal complexity, 199
Aviation landing fields, control under city plan, 577
Aylesworth, Milton, 132–33

B

Baltimore Criminal Justice Commission, 270–71
Bar Association, New York City, 251
Beale, Joseph H., work on restatement of law, 212
Bentham, Jeremy, ministry of justice proposal, 300
Bi-cameral system, 89–92
Biggs, Dr. Hermann, on public health, 492
Billboards, restrictions under city plan, 564–65
Birth control, 379–82
Birth rate, decrease, 337–38
Blackstone, Sir William, on common law, 56–60; cited, 177
Blanshard, Paul, poverty in an industrial community, 438–43

Blatchford, Justice, cited, 167–68

Bobbed-haired bandit, editorial on, 332–33

Bolshevism, confiscation of private capital, 668

Boston, delinquency, 312; recreation expenditures, 526; Metropolitan District, 581; city improvement, 608

Boston and Maine Railroad, suit of Norway Plains Company, 152–53

Boy Scouts, 528

Brownlow, Louis, on community planning problems, 617–29

Buck, A. E., on the significance of public budgeting, 630–44

Budgeting, public, 630–44

Buffalo, recreational organizations, 527

Buffalo Recreational Survey, cited, 525

Building codes, in city plan, 564

Building costs, and housing problem, 481–82

Business, social control, 2–15; regulation of competitive practices, 50–54; code of ethics of International Advertising Association, 52–4; as cause of increased complexity in law, 200; restatement of laws affecting associations, 214; *see also* Groups

Butchers' Union Co. *v.* Crescent City Co., 165

Butler, Nicholas Murray, on lawlessness and the law, 283–86

C

Campbell *v.* Chicago, 229

Capen, Samuel P., on public welfare and public education, 531–37

Capitalism, and industry, 672–73, 675; and socialism, symposium, 751–88

Cardozo, B. N., judge as lawmaker, 141–45; work on restatement of law, 211

Carriers, liability of, 152–53

Cemeteries, and city plan, 577

Censorship, of commercialized recreation, 524

Chamber of Deputies, France, 94–5

Chancery, Court of, 78, 200

Chase, Stuart, on industrialism, 681–89

Chicago, dance hall supervision, 524; public park system, 526; improvement plans, 597, 606–7

Child labor, accidents 497–99

Child-psychology study and crime prevention, 321–22

Children, delinquency, 312–31; and the home, 345–47; and divorce, 360–66; on farms, 412–13; and recreation, 515–18

Children's Bureau, 536–37; study of industrial accidents, 498

Children's courts, 326–27

City, representation in legislature, 102–3; emancipation from rural control, 104–5; effect of growth on politics, 121; home rule movement, 162; housing and congestion problems, 162; administration of criminal justice, 287–303; living standards, 438–61; poverty in an industrial community, 438–43; middle class living standards, 443–53; Park Avenue living standards, 453–61; housing, 462–85; recreation, 513–30; schools, 537–54; uses of land, 579–95; density of utilized areas, 586–87; water needs, 593–94; debts, 663–65; *see also* City planning

City Housing Corporation, map of Sunnyside Gardens, 564; Radburn, N. J., 617–29

City planning, 555–629; defined, 555–56; objectives, 557–58; preliminary survey, 558–60; comprehensive plan, 560–63; zoning, 562–63; control of private property, 563–66; control of public properties and utilities, 566–68; public improvements, 568–75; comprehensive city and regional plan, 575–76; long-term budgeted programme, 576–77; uses of land, 579–95; future, 594–95; correcting mistakes, 596–608; Strand-to-Holborn Improvement, London, 597–603; Kingsport, Tennessee, 608–17

Civilization, American, 679–81, 797–817; *see also* Society

Civil justice, simpler paths to, 273–82; small claims courts, 273–76; arbitration, 276–78; conciliation, 278–82

Civil law, enforcement, 47; procedure, 232–38, 247–53; arbitration, 276–78

Civil Liberties Union, report on strike cases, 747–50

Civil liberty, defined, 164

Clark, Carrol D., housing, 462–85

Clark, John Maurice, on social control, 2–15

Class conflict, 763–72

Cleveland, Conciliation court, 281, 282; recreation estimates, 526

Clinics, and crime prevention, 320–21, 322, 323; industrial, 511–12

Coke, Lord, cited, 179, 208

Coke, James L., on jury trials, 254–59

Cole, G. D. H., on social coercion, 1–2

Commercial law, 68; development, 196; uniform acts, 221

Common law, characteristics, 38–40; and legislation, 40–43; kinds, 56–7; status of a wife, 57–60; in America, 66–79; doctrine of supremacy, 68; torts, 68, 77–8, 81; individualism, 69–70, 74, 75–6; Germanic influence, 71–2; feudalism, 71, 72–5; Puritan influence, 74, 75–9; liberty of contract, 75, 76–7; judicial decisions, 146–57; precedent, 146–47, 155–57, 160; liability of carriers, 152–53; attitude on monopoly, 176–84; origin, 177–78; uncertainty and complexity of, 189–205; restatement 207–18; *see also* Law

Community centers, 528–29

Community control, nature of, 1–15

Competition, regulation of, 50–54

Conciliation, 278–82

Congestion, in cities, 162

Congress, United States, representation, 97–105; rotten boroughs, 97–105; occupations of members, 108–9; age and service of members, 110–12; and lobbies, 115–27, 132–35; senators and group interests, 117; lame ducks, 123–24

Consociation, 77, 288

Constitution, amendments, 100, 120, 158–59, 163–88, 192, 255–56; fifth amendment, 159; sixth amendment, 255; seventh amendment, 255–56; thirteenth amendment, 163–88; fourteenth amendment, 100, 158–59, 163–88, 192

Consumers' coöperation, 789–95

Consumers' Council, England, 88

Contraception, 379–82

Contracts, law of, 75, 76–7, 200–201, 213–14; liberty of, 76–7; unilateral, 200–201

Cooley, Edwin J., on prevention of crime, 315–31

Coöperative movement, 430–33, 789–95

County, legislative representation, 99–100

Courts. Chancery Court, 78, 200; procedure, 79, 202–3, 213, 232–38, 247–53; lawmaking, 141–57; crowded calendars, 154; doctrine of judicial review, 158–88; evils of costs system, 228–31; *in forma pauperis* proceedings, 229–30; reform of civil procedure, 232–38; federal, 160–66, 238–53; expansion of state jurisdiction, 242–43; small claims, 273–76; and conciliation, 278–82; domestic relations, 281; small claims, 281, 282; administration of criminal justice, 287–303; unification, 300; children's, 326–27; and crime prevention, 326–27; *see also* Judges; Jury system; Law

Coverture, defined, 58

Credit, public, 645–65

Criminal Justice Act of 1925, England, 265–68

Criminal Justice Commission, Baltimore, 270–71

Criminal law, enforcement, 47; restatement of procedure, 213; administration, 287–303

Criminals, non-jury trials, 262–72; law

and lawlessness, 283–86; administration of justice in American city, 287–303; mental defectives, 304–15; society and delinquency, 304–33; prevention of crime, 315–31

Criticism, standards of, 666–89; American civilization, 679–81; the new industrialism, 681–89

Customs, influence, 9–10; and law, 50–52; 56–7

D

Davenant *v.* Hurdis, 176, 179

Death rate, statistics, 338–39, 488, 507–8, 509

Debt, *see* Credit

Delinquents, *see* Criminals; Juvenile delinquency

Dennett, Mrs. Mary Ware, 745–46

Dewey, A. Gordon, on pressure groups and government, 129–32

Dewey, John, critique of American civilization, 679–81; on American civilization, 802–7

Discussion, liberty of, 712–41

Disease, *see* Health

Divorce, uniform acts, 221; causes, 339–41, 377–79, 383–86; statistics, 339–41, 377–79; and family disruption, 357–66

Domestic relations courts, 281

Draper, W. F., rural health, 433–37

Dublin, Louis I., on the American family, 334–42; on street accidents, 518

Due process clause, 158–59, 160

E

Economic power, property and liberty as, 171; withholding as, 181–84

Economic problems, and law, 34–43

Education, public, 531–54; changes, 532–35; vocational, 533, 549–550; teachers, 533–34, 541–44; national service of federal government, 535–37, 539–40; city schools, 537–54; purposes, 537–38; Gary system, 549; and democracy, 553–54; for industrial leadership, 760–62

Education, United States Bureau of, 539

Eldrige, Seba, on housing, 462–85

Eliot, Frederick M., on neighborliness, 350–57

Eminent domain, 168, 169

Employers' liability, 500–503

Employment agencies, legislative control, 161

England, Germanic law, 72; opposition to chancery courts, 78–9; Parliament, 93, 95–7, 106–8; court procedure, 237, 248–50; early jury trials, 254–55; non-jury trials, 263–69; Criminal Justice Act, 1925, 265–69; public budget, 634–43

England, *see also* Great Britain

Englewood, N. J., town plan, 571–72

Equity, Puritan influence, 78–9; procedure in federal courts, 247–53

Ethics, code of International Advertising Association, 52–54; Hippocratic Oath, 55; Christian, 735–38

Evidence, rules of, 202

Expectation of life at birth, lengthening of, 339; statistics of Metropolitan Life Insurance Company, 509

Expenditures, business and professional class, 443–53; on Park Avenue, 453–61; luxury, 520–21

F

Family, the, 334–66; social work and crime prevention, 319–20; decrease in size, 335; marriage statistics, 335–37; birth rate decrease, 337–38; and death rate, 338–39; divorce, 339–41, 357–66; decline of, 342–50; and neighbors, 350–57; marriage in Middletown, 367–86

Farms and farming, *see* Rural districts

Federal Courts, 238–53; diverse citizenship litigation, 243–45; increasing

power of judges over trials, 247–53; Federal judges, 241, 247–53
Federal Trade Commission, survey of wealth distribution, 795–97
Feeble-mindedness, *see* Mental defectives
Feudalism, and law, 71, 72–9, 180
Fisher, Irving, on city and state debts, 663–65
Fletcher *v.* Rylands, 147–49
Folkways, 24–25
Food, Ministry of, 88
Food Administration, 122
Ford, George B., on the newer city planning, 555–78
Fosdick, Raymond B., on the price of living comfortably, 807–17
France, Chamber of Deputies, 94–5
Frankel, Lee K., on control and elimination of industrial diseases, 506–12
Frankfurter, Felix, on federal courts, 238–46
Freedom, distinguished from liberty, 179; *see also* Liberty *and* Thought, freedom of

G

Gary system of education, 549
Germanic law, 67, 71–72
Gibbs–McWhinney bill, 131
Government, Federal, and public welfare, 535–37; educational work, 539–40; credit policies, 658–63; debt, 663; graph, 664; imperialism, 766–67
Government, Law enforcement, 48–9; separation of powers, 120–21, 158–59; process of, defined, 129; pressure by organized groups, 129–32; and health protection, 488–89; finances, 630–65; cost of, 635
Great Britain, death rate, 488; training of public health officers, 490; coöperative movement, 789–95; *see also* England
Group insurance, Kingsport, Tenn., 711, 613–14
Groups, and social control, 6–7; group habits, 24–6; and group conflicts, 113–40; and the lobby, 115–27, 132–35; growth during World War, 122; use of propaganda, 126–27; articulation of opinion, 127–28; pressure and the government, 129–32; membership of national associations, 135–38; class conflict, 763–72
Guilds, 22–23

H

Hamilton, Alexander, agitation for uniform laws, 218; financial policies, 658–59
Hargest, William M., on effort to harmonize laws in United States, 218–25
Health, rural districts, 433–37, 494–95; disease statistics, 434–36; and public welfare, 486–95; modern preventive medicine, 487–88; protection as government task, 488–89; training for public health officers, 489–91; modern public health programme, 492; funds, 492–93; control and elimination of industrial diseases, 506–512; ordinances in city plan, 564; Kingsport, Tenn., 611, 613
Herring, E. Pendleton, on lobbies, 115–27; national association membership statistics, 135–38
Hillquit, Morris, on socialism, 781–88
Hippocratic Oath, 55
Hoag, E. B., on the defective criminal, 304–15
Holden *v.* Hardy, 160
Holmes, Oliver Wendell, on law and experience, 30–31; path of the law, 80–81; dissenting opinion, Abrams *v.* United States, 742–43; dissenting opinion in case of Rosika Schwimmer, 744–45
Home Economics, Bureau of, data on family expenditures, 443–53
Home rule movement, municipal, 104–5, 162

Hospitals, shortage, 435; growth, chart, 489

Hours of labor, legislation, judicial attitude, 186–87; women in various states, 440; in textile industry, 441

House of Commons, 93; occupations of members, 106–7; budget, 643

House of Lords, 89–90; classification of members, 107–8

House of Representatives, United States, occupations of members, 108; *see also* Congress, United States

Housing 462–85; city, 162, 564; and crime prevention, 327; and the family, 347–48; causes for poor conditions, 469–71; rural districts, 468, 471; remedies for poor conditions, 471–72; model housing law, 472–77; opposition to legislation, 476–77; taxation a factor, 477–79; and land values, 479–81; building costs, 481–82; and interest rates, 482–85; in city plan, 564; Kingsport, Tenn., 614–15; Radburn, N. J., 622–24

Howard, Pendleton, on a substitute for trial by jury, 262–72

I

Imperialism, U. S., 766–67

Incomes, farm, and living standards, 419–25

Individualism, defined, 9–10; and common law, 40–41, 69–70, 74, 75–6

Industrialism, criticism of, 681–89; and religion, 698–99

Industry, conciliation in accident cases, 281; accident prevention and compensation, 495–506; control and elimination of occupational diseases, 506–12; Kingsport, Tenn., 613, 615; type of managers, 759–60; and capitalism, 672–73; new leadership in, 753–63; technical training, 760–62; distribution of ownership, 762–63; and pragmatic socialism, 772–81; *see also* Labor

Infant mortality, decrease, 338, 488

Initiative and referendum, for cities, 104–5

Insanity, mental defectives, 304–15; mental disease statistics, 434

Insurance, accident, 499–500; group, 611, 613–14; social, 778–79

Interests, vested, 19–23

International Advertising Association, code of ethics, 52–54

Inventions and discoveries, cause of increasing legal complexity, 199

J

Jones Act, state courts' jurisdiction, 242

Judges, Puritan prejudice, 79; as lawmakers, 141–57; doctrine of judicial review, 158–88; Federal, 241, 247–53; *see also* Courts; Law

Jury system, 254–72; substitute for, 262–72

Justice, civil, 273–82; criminal, 287–303; *see also* Law

Juvenile delinquency, mental defectives, 312–13; prevention, 315–31

K

Kingsport, Tennessee, plan, 608–17; Kirkpatrick, E. L., on farmers' living standards, 408–18

L

Labor, women, 160–61, 440; judicial attitude on legislation, 160–61, 186–87; as property, 165, 169, 170; hours, 186–87, 440, 441; table of hours and wages in textile industry, 441; accidents and compensation, 495–506; children, 497–99; strike cases, report of Civil Liberties Union, 747–50; and capital, 769–72; participation in management, 776–77; *see also* Industry

Labor organizations, membership, 137; *see also* Trade unions

Labor Statistics, U. S. Bureau of, industrial accident survey, 495–96, 497; study of workman's compensation, 502–4; study of living standards, 796–97

Labour Party, England, 107–8

Laidler, Harry W., on capitalism and socialism, symposium, 751–53

Land, values and housing problem, 479–81; urban uses, 579–95; intensive use, 585–86; density standards in cities, 586–87; space occupied by commerce, 587–88; relation of open spaces to population, 588–89; street space requirements, 590–91; subdivisions, 591–92

Laski, Harold J., on legislative assemblies, 84–97; classification of members of House of Commons 106; on consumers' coöperation, 789–95

Law, enforcement, 7–8, 26–28, 46–49; and society, 16–29; characteristics of, 26–40; empiricism of, 31–34; social and economic problems of, 34–43; political and economic changes, 37–8; legal sanctions, 44–52; criminal, 47, 213, 287–303; civil, 47, 232–38, 247–53, 276–78; relation to morals and customs, 50–52; Roman, 66–75, 156, 204, 254; commercial, 68, 196, 221; feudalism, 71, 72–9, 180; procedure, 79, 202–3, 213, 232–38, 247–53; judicial law-making, 141–57; precedent, 146–47, 155–57, 160, 161–62, 193–94; doctrine of judicial review, 158–88; labor legislation and U. S. Supreme Court, 160–61; statutory, 189, 192, 196, 201, 202–5, 208; outline, 191; of negligence, 197–98; due care test, 198; need for improvement, 189–205; acts of forbearance, 200–201; lack of systematic development, 200–201; rules of evidence, 202; variations in different jurisdictions, 203–5; work on restatement of, 207–18; uncertainty in, 208–17; effort to make uniform, 218–25; rise of diversity in United States, 218–19; reports, 193–94, 223–24, 233; delays in, 226–53; and lawlessness, 283–86; and delinquency prevention, 326–27; child labor, 498–99; *see also* Common law

Lawyers, in Congress, 109; as lobbyists, 124; conservatism, 202; establishment of American Law Institute, 205–7; fees, 231–32

Legislative assemblies, 82–112; *see also* Congress, United States; Parliament

Lewis, William Draper, on American Law Institute, 205–17

Lewisohn, Sam A., on new leadership in industry, 753–63

Liability, railroads, 152–53; employers', 242, 500–502

Liberty, of contract, 75, 76–7; United States Supreme Court interpretations, 163–88; civil, 164; economic power, 171; distinguished from freedom, 179; freedom of thought, 712–50

Lindeman, E. C., on recreation, 513–30

Lippmann, Walter, on concepts of God, 701–4

Living standards, in poorer rural districts, 387–408; factors in farmers' living standards, 408–18; and farmers' incomes, 419–25; effects of differences in economic status of farmers, 425–29; social aspects of farmers' coöperative movement, 430–33; rural health, 433–37; poverty in an industrial community, 438–43; among professional people, 443–53; on Park Avenue, 453–61; study by Bureau of Labor Statistics, 796–97

Llewellyn, Karl N., on law in society, 24–9; on legal sanctions, 44–52; on articulation of group opinion, 127–28

Lobbies, organized groups, 115–27; power lobby, 132–35

Lochner *v.* New York, 160

Lutz, Harley L., on public credit, 645–58

Lynd, Robert and Helen, on marriage in Middletown, 367–86

M

McChristie, Mary Edna, on family disruption and divorce, 357–66

McConnell, Arthur Harris, on jury system, 259–62

Madison, James, on nature of group conflicts, 113–15

Magna Carta, foundation of public law, 74; liberties, 176, 179–80

Marketing, improvement, 420; coöperative movement, 430–33

Marriage, status of a wife at common law, 57–60; statistics, 335–37, 368; in Middletown, 367–86; companionship in, 375–76; *see also* Divorce; Family

Medicine, and public health, 487–88; *see also* Health; Physicians

Mellon, Andrew W., on credit policies of United States Treasury Department, 658–63

Mental diseases, statistics, 434; defectives, 304–15

Metropolitan districts, regional planning, 580–83; decentralization tendencies, 583–85

Middletown, marriage in, 367–86; discussion by Raymond B. Fosdick, 807–17; discussion by John Dewey, 802–7

Mill, John Stuart, on liberty of thought and discussion, 712–41

Minimum wage laws, 160–61, 187

Minnesota rate case, 166, 167–69, 175, 184

Monopolies, Case of, 176, 179; Statute of, 176; common law attitude, 176–84

Mores, 24–25, 50–52, 523–25, 735–37

Moving picture theaters, statistics, 520

Munn *v.* Illinois, 166–67, 175, 181, 184, 186

N

National Electric Light Association, abstracts from minutes, 132–35

Natural rights, 16

Nelson, Lewis P., on correcting mistakes in city planning, 596–608

New York Metropolitan region, 582–83, 584

Noise, campaigns against, 132

Nolen, John, on city plan of Kingsport, Tennessee, 608–17

Norway Plains Company *v.* Boston and Maine Railroad, 152–53

Nourse, E. G., on social aspects of co-operative movement, 430–33

O

Occupational diseases, control and elimination, 506–12

Ogburn, William F., on decline of American family, 342–50

Organization, *see* Groups

P

Park Avenue, 453–61

Parks and parkways, under city plan, 571; Radburn, N. J., 619–25

Parliament, 78, 89–90, 93, 95–7, 106–8, 634

Peterson, George M., urban uses of land, 579–95

Physicians, Hippocratic Oath, 55; shortage in rural districts, 435; and public health work, 491; in industry, 510–11

Pickets, arrests of, 747–50

Playgrounds, *see* Recreation

Police power of states, 159, 160, 161, 163–75, 180–81

Politics, parties, 85–6, 119–21; use by organized groups, 129–32; labor's voice, 139–40; and public health work, 493

Population, basis of legislative representation, 100–102; family statistics, 335–36; marriage statistics, 368; in agricultural sections, 423–24; urban and rural, 579

Pound, Roscoe, 31–44; empiricism of the law, 31–4; social and economic

problems of the law, 34–44; common law in America, 66–79; judicial lawmaking, 153–54; quoted, 273; criminal justice in the American city, 287–303
Price fixing, United States Supreme Court's attitude, 163–75
Propaganda, use of by lobbyists, 126–27
Property, as cause of group conflicts, 113–15; United States Supreme Court interpretations, 163–88; exchange-value, 164–73; use-value, 164–68, 173; labor as, 165, 167, 169, 170; expected earning power as, 168; good will as, 170–71; economic power, 171; traditional beliefs, 668
Public finance, 162; budgeting, 630–44; credit, 645–65
Public health, *see* Health
Publicity, *see* Propaganda

R

Radburn, N. J., planning problems, 617–29
Railroads, liability of carriers of goods by, 152–53; and city planning, 566
Randall, J. H., Jr., on destruction of traditional beliefs, 690–700
Recreation, and crime prevention, 324–26; playgrounds and crime prevention, 325; regulation and crime prevention, 327; and the family, 347; in cities, 513–30; as social treatment, 515–17; playgrounds and safety, 517–18; space problem, 518–19; commercialized, 519–25; the dance, 522–24; as social control, 525–26; the play impulse, 526–28; settlements and community centers, 528–29; school playgrounds, 550–51; commercialized, 567; space requirements, 589–90
Referendum, *see* Initiative and referendum
Reform organizations, membership, 138
Regional planning, 556–57, 575–76, 580–83; 584; 589–90
Religion, 690–711; and crime prevention, 328–29; destruction of traditional beliefs, 690–700; and science, 696–98; and industrialism, 698–99; concepts of God, 701–4; church in acquisitive society, 704–11; Christianity and freedom of thought, 712–41; persecution, 712–19; Christian morality, 735–37
Representation in legislature, *see* Legislative assemblies
Restraint of trade, *see* Monopoly
Rice, Stuart A., age and service of congressmen, 110–12
Rights, 16–23
Rogers, Lindsay, on functions of legislature, 82–3; where statesmen come from, 105–12
Roman law, 66, 67, 68, 71, 72, 73, 75, 156, 204
Root, Elihu, on object of government, 220; quoted, 283–84
Rorty, M. C., on pragmatic socialism, 772–81
Rotten boroughs, 97–105
Russell, Bertrand, on social systems, 666–79; quoted, 702

S

Safety movement, in industry, 499–500; and playgrounds, 517–18
Schools, and crime prevention, 322–24; city, 537–54; problems of organization, 541–47; age-limits for attendance, 545; relation to public library, 547–49; use of school buildings, 548–49; playgrounds, 550–51; financing, 551; and city planning, 572; *see also* Education
Schwimmer, Rosika, case of, 744–45
Science, and religion, 696–98
Senate, United States, occupations of members, 109; senators and group interests, 117
Servants, decline in number, 334
Slaughterhouse cases, 163–66

Small claims courts, 273–76; conciliation in, 281–82

Smallpox, statistics, 434

Smith, Adam, cited, 22, 158, 166, 183

Smith, R. H., on law's delay, 226–32; on simpler paths to civil justice, 273–82

Smith-Hughes Act, 539

Social coercion, 1–2; Social control, 2–15; law and custom as agency, 16–29

Social insurance, 778–79

Socialism, 668, 676–77, 678; and capitalism, symposium, 751–88; pragmatic, 772–81

Social welfare, uniform acts, 221; and crime prevention, 319–20, 328; settlements and community centers, 528–29

Society, social control, 2–15; rights, 16–24; and law, 16–29, 34–43; political and economic changes, 37–8; legal sanctions, 44–54; and delinquents, 304–33; standards of criticism, 666–89; fallacies in judgment, 669–74; under state socialism, 673; necessity for belief, 674–76; satisfaction of needs, 674; importance of progress, 677; freedom and creative work, 677–78; religion in, 690–711; changing aspects of civilization, 691–93; limits of reconstruction, 693–95; results of city, 695–96; leadership, 754–60; class conflict, 763–72

Sports, *see* Recreation

State socialism, 673

Statutory law, uncertainties and complexities, 189, 192, 196, 201, 202–5, 208

Stone, Harlan F., on some limitations of judicial lawmaking, 155–57

Streets, *see* Thoroughfares and streets

Strikes, report of Civil Liberties Union, 747–50

Substantive law, outline, 191

Sumner, William Graham, rights, 16–19, 24–25, 27

Sunderland, Edson R., reform of civil procedure, 232–38

Sunnyside Gardens Development, map, 564

Supreme Court, United States, attitude on labor legislation, 160–61; precedent, 161–62, slaughterhouse cases, 163–66; *see also* Federal Courts

T

Taft, William Howard, cited, 161; on increasing power of judges over progress of trials, 247–53

Tawney, R. H., on church in acquisitive society, 704–11

Taxation, and housing problem, 477–79; and land values, 480; *v.* borrowing, 648–50

Taylor, C. C., effect of differences in economic status of farmers, 425–29

Taylor, H. C., on living standards and farm incomes, 419–25

Teachers, selection of, 541–42; salaries, 541, 542–44; training of, 533–34

Thompson, Clara B., Park Avenue, 453–61

Thoroughfares and streets, systems under city plan, 569–70; space requirements, 590–91; boulevard system of Paris, 596–97; New York City projects, 605–6; Radburn, N. J., 619–24

Thought, freedom of, 712–50; dissenting opinion in Abrams *v.* United States, 742–43; dissenting opinion in case of Rosika Schwimmer, 744–45; case of Mrs. Dennett, 745–46; strike cases, 747–50

Trade associations, membership, 136

Trade unions, control by, 6, 7; attitude toward vested interests, 231; representation in Parliament, 107–108; wartime growth, 122; political campaigns, 139–40; leadership in, 761–62

Tradition, and the social structure, 668

Traffic, and law enforcement, 50; control under city plan, 568; and zoning, 592

Transit, control in city plan, 566–67

Tuberculosis, statistics, 434; death rate decline, 509

U

Uniform laws, movement, 219–25
Use-value of property, *see* Property
Usury laws, judicial attitude, 184–85

V

Vincent, George E., on public welfare and health, 486–95

W

Wages, in textile industry, 441; minimum wage laws, 160–61, 187
Ward, Harry F., on progress in United States, 797–802
Water supply, under city plan, 570; city's needs, 593–94
Wealth, Park Avenue living standards, 453–61; distribution in America, 795–97
Webb, Sidney and Beatrice, on vested rights, 19–23
Williams, E. H., on defective criminals, 304–15
Women, status of a wife at common law, 57–60; present position in Massachusetts, 61–5; equal rights question, 61–5; labor legislation, 160–61; minimum wage laws, 187; work outside the home, 344–45, 382–83; maximum working hours, 440
Woodhouse, C. G., on living at professional level, 443–53
Worcester, D. L. W., on distribution of wealth in America, 795–97
Workmen's compensation, 204, 500–506

Y

Young, B. L., on position of women in Massachusetts, 61–5

Z

Zoning, maps of a typical city, 563; and transportation, 592; Kingsport, Tenn., 616

COLUMBIA UNIVERSITY PRESS
Columbia University
New York

FOREIGN AGENT
OXFORD UNIVERSITY PRESS
HUMPHREY MILFORD
Amen House, London, E.C.

Date Due

F 28 '3			
O 14 '3			
OCT 5 '			
Apr 14 '44			
JUN 22 '44			
JUN 4 '45			
D 18 '45			
MAY 10 '50			
DEC 15 '52			
MAY 22 '59			
[illegible]			

Library Bureau Cat. no. 1137

308 Taylor, Horace
AUTHOR
T21 Readings in contem-
TITLE
v.2 porary problems in the
DATE DUE BORROWER'S NAME
U.S.

308
T21
v.2